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MISSISSIPPI TAX CASES.

Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed April 10, 1900.

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY ET AL.,
Plaintiffs in error,
vs.
WIRT ADAMS, State Revenue Agent.

In error to the Supreme Court of the State of Mississippi.

BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

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NOEL GALE,
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Of counsel.

WASHINGTON, October Term, 1899.

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BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

This writ of error presents for review a final judgment of the Supreme Court of Mississippi (record, p. 688), which affirmed a judgment in favor of the defendant in error, Wirt Adams, as state revenue agent, against the plaintiffs in error, The Yazoo and Mississippi Valley Railroad Company and the Illinois Central Railroad Company, who were defendants in the court of original jurisdiction. Taxes imposed and levied upon a portion of the railroad of the Yazoo Company for the years 1892 to 1897, inclusive, formed the subject matter of the controversy. It was claimed that the Illinois Central Railroad Company had assumed the payment of these taxes by virtue of certain covenants in mortgages (record, p. 135); but whether or not the revenue agent could enforce the covenants is immaterial, for the real questions in dispute relate solely to the Yazoo Company and its charter rights, and there is no occasion for any detailed statement of the relation of the two companies.

The Yazoo Company, defendant below and plaintiff in error in this court, denied liability upon the ground

that, pursuant to a valid contract with the State of Mississippi, made in 1882 and still in force, although nearly expired, the amount of the taxes had already been paid in discharge of debts incurred in the construction of the railroad, and that the statutes authorizing the collection of these taxes impaired the obligation of such contract. As the judgment now sought to be reversed adjudges the right of recovery of the taxes in question, and subsequent legislation is thereby enforced, the case arises under the contract clause of the Constitution of the United States (Art. I., sec. 10).

The state revenue agent, plaintiff below and defendant here, challenges the jurisdiction of this court, and then, on the merits, contends (first) that the statutory contract relied on by the Yazoo Company was unconstitutional and void from the beginning; and (secondly) that, if valid, it was repealed or was terminated by reason of the merger or consolidation effected in 1892, after the adoption of the state constitution of 1890, as explained below.

Statement of the case.

The origin of the legislation and of the policy and form of legislative contract now in question is both interesting and instructive.[1] The legislature of Mississippi from 1870 until after 1882 deemed it necessary for the public good to invite the investment of capital in the construction of railroads. The resources of the state could not be developed without railroads, and all progress and improvement would be stayed unless means were found for this necessary public improvement. The public treasury was bank-

[1] In *Mobile & Ohio Railroad* v. *Tennessee*, 153 U. S. 486, 502, Mr. Justice Jackson, referring to an exemption from taxation in a railroad charter, said: "Legislative contracts, especially, should be read in the light of the public policy entertained, and the purposes sought to be accomplished at the time they were made, rather than at a later period when different ideas and theories may prevail."

rupt, and the public credit was shattered. The issue of state bonds in aid of public improvements undertaken by railroad corporations, even if the bonds could then have been marketed, was impracticable, for the constitution of 1869 had prohibited the pledge or loan of the credit of the state.[1] The levy of a general tax to assist in the building of railroads would have been fruitless as well as an unbearable burden upon a ruined community, for at that time the condition of Mississippi was indeed miserable. The resources of the state had been exhausted by the struggles and sacrifices of the Civil War. The great revolution in industrial, agricultural and economic conditions resulting from that terrible strife and from the emancipation of the slaves had left the community so poor that with difficulty could the inhabitants bear the burden of the taxes necessary for carrying on the local government. The public records show that millions of acres were being abandoned and forfeited to the state for non-payment of taxes.[2] Even as late as 1881, we find the state raising funds by selling nearly two million acres of forfeited lands of the levee boards, and such sales, as is matter of common knowledge in Mississippi, were made at the incredibly low figure of twelve and one-half cents per acre.[3] The distress of the community was declared in petitions from the legislature to Congress. The paramount necessity of the whole community was clearly the building of railroads, so as to afford adequate means of communication and trans-

[1] Cons'. 1869, Art. XII., Sec. 5.

[2] Appendix to Senate Journal 1870, pp. 20–25; *id.* 1871, p. 1 (Governor Alcorn's Message); *id.* (List of lands held by the State); Laws Miss. 1878, pp. 243-5; Appendix Senate Journal 1882, (Gov. Lowry's Message); Laws 1882, p. 134; *Murdock* v. *Chaffe*, 67 Miss. 740, 750; record, pp. 348, 381.

[3] Department Reports 1882, Report of Commissioner of Immigration, pp. 11, 19; *Murdock* v. *Chaffe, supra;* Laws of Miss. 1888, p. 40.

portation, and thereby develop the resources of the state. Yet the topography of the country was such that both the construction and the maintenance of railroads were unusually difficult and expensive, and railroad enterprises then and for many years promised very doubtful profit.[1] Especially in the Mississippi delta—that extensive region lying between Memphis and Vicksburg on the one hand, and the Mississippi river and the bluffs east of the Yazoo on the other—the country was a wilderness as late as 1882. Except for small areas along the fronts of the navigable rivers, the lands were waste and wild swamp, uncultivated, uncleared and unexplored, subject to annual inundations from the Mississippi. The levees had been swept away again and again, and Congress was being prayed for aid to rebuild them upon the ground that taxation for this purpose had utterly failed and been abandoned.[2]

Thus, in a memorial to Congress, the legislature which enacted the legislation under which we claim (Laws 1882, p. 134) used the following language with reference to the Gulf and Ship Island Railroad:

> "We must consider the most important practical question of the resources available for the work. It is manifest the road cannot be built by corporate or individual subscriptions in our own State. The well known pecuniary condition of our people forbids such a hope. But we have good reason to believe that if the former grant of government lands can be revived, a substantial basis of credit will be created; and with this material aid assured, there will be no difficulty in enlisting northern and foreign capital to insure the early completion and equipment of the road."

In this condition of affairs, the legislature concluded, in the exercise of what must seem to all candid minds a wise foresight, that the only chance or prospect of de-

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[1] Record, pp. 403–405.

[2] Laws of Miss., 1878, pp. 243–245; Laws of Miss., 1882, pp. 123, 124, 127.

velopment and improvement was by inducing the investment of capital belonging to the inhabitants of more prosperous states. The legislature, therefore, undertook to induce outside investors to build railroads in the state, and thus to provide the necessary means of communication and transportation upon which future progress, development and prosperity depended.[1]

The state was in the attitude of soliciting subscriptions of capital in the formation of railroad corporations, endeavoring to induce investors to undertake the risk of necessary public improvements for the benefit of the people of the whole state, with the hazard of loss and perhaps financial ruin to the promoters, and offering to vote taxes as a consideration, by way of contract, for the acceptance of its proposals. The proposals were accepted and performed in good faith, and the result of the construction of railroads has been to increase the value of property in the Delta district fully one hundredfold, and to turn the district into the garden of the state; and the state and counties now collect from this territory immensely increased revenues.

A series of acts providing for the incorporation of railroad companies was passed from 1870 to 1882 whereby the state agreed that if the incorporators would invest and risk their capital and build railroads, and thus create new facilities for transportation and new property which before did not exist, and enhance the values of the property of the whole community, the state would, during

[1] In 1860 there were 862 miles of railroad in Mississippi (Poor's Manual, 1897, p. xvi); in 1880, just before the granting of the appropriation involved in this case, the total mileage had increased to 1,127 miles (*ib.*); in 1886, after the completion of the Louisville, New Orleans and Texas Railway, the total number of miles was 2,111 (Poor's Manual, 1887, p. xi); and this was increased to 2,552 miles by the year 1896 (Poor's Manual, 1897, p. xvi). The total mileage of the L., N. O. & T. Company and the Yazoo Company, as consolidated, is 947 miles (Poor's Manual, 1899, p. 515).

a stated and limited period, appropriate and set apart from time to time an amount equal to all taxes to which the railroad companies might be subject, and would apply the amount to the payment of such debts and liabilities as the railroad companies might have to incur in the construction of their respective roads. Each charter provided for a capital stock, and the appropriation only contemplated the reimbursement of construction debts incurred in addition to the capital investment, if the capital were found insufficient. This appropriation was, however, made upon two conditions: first, that an amount equal to the taxes so appropriated and set apart should have been actually and in good faith applied by the railroad company during the preceding year in payment of debts incurred or money borrowed for construction; and, secondly, that whenever the profits of any of the companies were sufficient to pay an annual dividend of eight per cent. upon the capital stock over and above the payment of debts and liabilities, the appropriation of taxes should cease. In other words, instead of appropriating a fixed amount payable at once or in annual instalments, the legislature agreed to appropriate and set apart each year, until the construction debt should be discharged, an amount equal to the taxes which might be levied upon the railroad companies.

The extent to which this policy was adopted by the legislature may be judged from the fact that, during the session of 1870, ten railroad companies were incorporated, with each of which the same contract was made; eight companies were similarly incorporated during the session of 1871, twelve during the session of 1872 and eleven during the session of 1873. Between 1870 and 1884, inclusive, forty-four railroad companies were incorporated, with

each of which the contract now before the court was made by the legislature on behalf of the State of Mississippi substantially in the same form and to the same effect. The contract involved in this suit was made in 1882.

During the same period, the legislature granted to forty-two railroad corporations express exemptions from taxation (see appendix D). The legislature of Mississippi, therefore, constantly recognized and emphasized the difference between a contract of appropriation of taxes to reimburse payment of construction debt and an unconditional exemption from taxation.

The form of contract of appropriation now involved was first embodied in the charter of the Mobile and Northwestern Railroad Company, approved July 20, 1870 (Laws 1870, Ch. 104, Sec. 21). It is known and referred to in subsequent statutes and decisions as "section 21," and is as follows (record, p. 40) :

> "SECTION 21. Be it further enacted, That in consideration of the construction of the railroads provided for herein, and of the great benefit which the State will receive in the development of its agricultural resources by means of said railroads as works of internal improvement, and also of the increased value which will thereby be added to the property of the State, thus enabling the State to greatly increase its revenue without additional and burdensome taxation on the people, the State hereby agrees with said company (and which agreement is irrepealable), that all taxes to which said company shall be subject for the period of thirty years, are hereby appropriated and set apart, and shall be applied to the payment of the debts and liabilities which the said company may have incurred in the construction of said road, or for money borrowed by said company upon lands or otherwise, to be used in constructing said road, or paying debts incurred by said company in constructing the same; and it shall be the duty of the tax collector in every county, in each and every year, to give to said company a receipt in full for the amount of said taxes upon receiving from said company an affidavit made by the president or cashier of said company that the amount of said taxes have actually and in good faith

been paid and applied by said company during the year, in payment of the debts incurred, or money borrowed as aforesaid, and which receipt shall be in full of all taxes, county, State, and municipal, to which said company shall be subject. Provided, however, that whenever the profits of said company shall enable it to declare and pay to the stockholders an annual dividend of eight per cent. on its capital stock over and above the payment of its debts and liabilities, then the appropriation of the taxes aforesaid shall cease, and said taxes shall be paid by said company to the tax collector, to be by him paid over as required by law."

The Memphis and Vicksburg Railroad Company was incorporated in the year 1870, and by supplemental act of August 8, 1870, this provision of section 21 was expressly made applicable to it (appendix, p. iv). The New Orleans, Baton Rouge, Vicksburg and Memphis Railroad Company was incorporated in 1882 (appendix, p. v). These corporations were authorized to consolidate by the acts of March 3, 1882, and March 15, 1884 (appendix, pp. v, vii). By section 5 of the act of 1882, the provisions of section 21 above quoted were made applicable, as an independent and original grant, to the company to be formed by the consolidation thereby authorized (appendix, p. vi), as follows:

"SEC. 5. *Be it further enacted*, That the provisions of the twenty-first section of an act entitled, "an act to incorporate the Mobile and Northwestern Railroad," approved July 20, 1870, is hereby made to apply to the said consolidated company, and for that purpose the said section is hereby declared to be part of this act, and this section shall be construed as though the said twenty-first section was specially and fully set out herein; but this section shall not be in force for a longer time than twenty-five years from the approval of this act." (Laws Mississippi, 1882, p. 1013).

This is the particular contract which is now presented for adjudication on this writ of error. Under the authority of these acts of 1882 and 1884, and on the 12th of August, 1884, a corporation was formed under the name or title of the Louisville, New Orleans and Texas Railway Com-

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pany by a consolidation effected between the two companies above mentioned and a Tennessee company and a Louisiana company (record, p. 12). The capital stock issued by the Louisville, New Orleans and Texas Company was $5,000,000, and its construction debt was $35,236,000, the actual cost of the road being $28,421,115 (*id.*, pp. 293, 557). The exceptional difficulties under which the construction was prosecuted are fully explained in the testimony (*id.*, pp. 300, 305, 306, 310, 316, 403, 405, 406, 411, 420, 421, 422, 423, 427, 428, 429).

The consolidated company continued to own and operate the road until October 24, 1892, when it was merged in or consolidated with the Yazoo and Mississippi Valley Railroad Company, one of the plaintiffs in error here, by articles of agreement, which fixed the terms of the merger or consolidation.

The authority for this consolidation of 1892 will be found in the charter of the Memphis and Vicksburg Railroad Company (Laws 1870, p. 326, appendix, p. iv), which granted power "to consolidate the stock, property and franchises of the road with any other road or roads upon such terms as may be consistent with the powers conferred upon said company;" and in the charter of the New Orleans, Baton Rouge, Vicksburg and Memphis Railroad Company (Laws 1882, p. 932, appendix, p. v), which granted power and authority "to consolidate the company with any other company," and provided that when such "consolidation is effected, the said company shall be entitled to all the benefits, rights, franchises, lands and property of every description belonging to said road or roads so sold or consolidated." These powers passed to the consolidated company of 1884 by virtue of section 1 of the act of 1882 (appendix, p. v), as follows:

"The company so formed by such consolidation shall be deemed and held to be a corporation created by the laws of this State, and shall have, enjoy and possess all the rights, ways, privileges, franchises, property, grants and immunities, which are now possessed by the companies which may enter into such consolidation, as fully as though the same were conferred specially in this act, and to that end the charters of said consolidating companies shall be taken and held to be a part of this act."

The power of the Yazoo Company to consolidate was derived from section 5 of its charter (Laws 1882, p. 842, appendix, pp. vi, vii), which provided as follows:

"Said company may consolidate with any other railroad company in or out of the State of Mississippi upon such terms as the consolidating companies may agree upon; * * * and upon any such consolidation the consolidated company shall have and enjoy all the property, rights, privileges, powers, liberties and immunities and franchises herein granted."

The agreement of consolidation provided, among other things, as follows (record, p. 14):

"ARTICLE I. Such consolidation shall be effected by uniting or merging the stock, property and franchises of the party of the first part with and into the stock, property and franchises of the said The Yazoo and Mississippi Valley Railroad Company, without disturbing the corporate existence of the last-named company, or the formation of any new, distinct, corporation, unless such result shall be necessary to give legal effect to this agreement; but whatever may be the legal consequence of the consolidation herein provided for, this agreement is to stand and be effective. * * *

"ARTICLE IV. Every holder of the stock of either of the said companies now outstanding shall be entitled to cast one vote for each share of stock held by him at all stockholders' meetings of the consolidated company, which vote may be cast either in person or by proxy, and shall have all the rights of a stockholder of the consolidated company, as fully as if new shares of the consolidated company had been issued and exchanged therefor; and in case the consolidated company shall determine to issue new shares, such shares shall be exchangeable at par for the now outstanding shares of each of the constituent companies; and the remainder of the capital stock of the consolidated company shall

be issued from time to time, and upon such terms and conditions as may be prescribed by the board of directors of said company.

"ARTICLE V. All and singular the rights, powers, privileges, immunities and franchises, and all the railroads, real and personal estate, easements, fixtures, equipments, choses in action and property and assets of every kind, nature or description, belonging to either of the parties hereto, shall be vested in, and become the property of, the said consolidated company, without any further act, deed, conveyance or assurance being required in the premises."

The state constitution in force in 1882 and adopted in 1869 provided in regard to taxation as follows (appendix, p. 1):

"ARTICLE XII., SEC. 13. The property of all corporations for pecuniary profit shall be subject to taxation the same as that of individuals.

"SEC. 20. Taxation shall be equal and uniform throughout the State. All property shall be taxed in proportion to its value to be ascertained as directed by law."

After the passage of the various acts making appropriations of taxes in the language of section 21 and authorizing the consolidation as above recited, but before the merging of the Louisville, New Orleans and Texas Company into the Yazoo Company, the people of Mississippi, in 1890, adopted a new constitution, which enacted the provisions respecting taxation, corporations and charter rights which are quoted in the appendix, pp. i, ii.

Under the authority of certain general legislation of the State of Mississippi passed in 1892 and 1894, and which is fully set forth in the appendix[1] (pp. ix–xiv), Adams, the defendant in error, brought three suits in the Circuit Court of Hinds County, Mississippi, in December, 1893, one for the recovery of the taxes of 1892,

[1] By section 3884 of the Mississippi Code of 1892, it is made the duty of the tax-collector to "collect the railroad taxes from said rolls in all respects as he collects other taxes;" and section 3803 provides what "may be received by tax-collectors in payment of taxes;" *i. e.*, United States treasury notes and coins, national currency, and warrants drawn upon the state or county treasuries (appendix, pp. xi, ix).

another for the taxes of 1893 and 1894, and a third for the taxes of 1895, levied upon that portion of the road of the Yazoo Company which had been originally constructed by and belonged to the Louisville, New Orleans and Texas Company and its original constituents. In the first-mentioned suit, the Yazoo Company interposed a plea setting forth the charter rights of the L., N. O. & T. Company, and alleging compliance with the provisions of section 21 respecting payment of construction debt and the delivery of the affidavit showing application of the amount of the taxes (record, p. 55). A demurrer to this plea was overruled (*id.* p. 57), and replications were filed (*id.* p. 58 *et seq.*). Afterwards, these three suits were consolidated, the pleadings in the first case being made applicable to all, without waiver of any exceptions or errors (*id.* pp. 88, 106). Upon trial of the issues of fact raised by the replications, a verdict was returned in favor of the present plaintiffs in error as to the taxes of 1892, 1893 and 1894, and in favor of the state revenue agent for the taxes of 1895, upon which judgment was rendered for $84,985.63 (*id.* p. 108). Both parties appealed to the supreme court of the state, where, after one argument and two rearguments, the judgment was reversed upon both the appeal and the cross-appeal and the cause remanded for a new trial upon the issues (*id.* pp. 510–512). The Chief Justice dissented (*id.* p. 515).

After the cause had been remanded to the circuit court for a new trial, two other suits subsequently brought for the recovery of the taxes for the years 1896 and 1897, respectively, were consolidated with the original suit (*id.* p. 610), and the plaintiffs in error filed separate pleas in the consolidated suit so embracing all the suits, and by these pleas they expressly attacked the legislation under

authority of which the suits had been brought as in violation of the contract clause of the Federal Constitution (*id.* pp. 566, 594). The pleas containing this claim were, upon motion of the defendant in error, stricken out as constituting no defense (*id.* p. 608), to which exception was duly taken (*id.* p. 609). The plaintiffs in error thereupon withdrew their other pleas and declined to plead further (*id.* p. 610); and the cause having been tried, judgment was rendered for the taxes for the six years included in the consolidated suit (*id.* p. 630). The plaintiffs in error appealed to the Supreme Court of Mississippi, where this last-mentioned judgment was affirmed on February 20, 1899, and final judgment rendered against them for $548,676.99 taxes and $27,433.84 damages (*id.* p. 688). The present writ of error was thereupon sued out, being allowed by the Chief Justice of the Supreme Court of Mississippi (*id.* p. 690), who again dissented (*id.* p. 688), and who granted a certificate as to the federal question involved (*id.* p. 690), which conclusively shows that upon the argument and hearing the federal question was duly raised.

The decision of the court below was based substantially upon three propositions: (1) that the contract of appropriation was invalid when made, because in conflict with the constitution of 1869; (2) that, if valid when made, the contract had been terminated by virtue of the consolidation in 1892 and the benefit thereof had not passed to the Yazoo Company; and (3) that the provision had been duly repealed.

Specification of Errors.

The plaintiffs in error assert and intend to urge and rely upon the following errors of the court below, viz.:

1. That the court erred in holding that the provision of section 21 did not constitute a valid and irrepealable contract between the state and the railroad company under the Mississippi constitution of 1869.

2. That the court erred in holding that such a contract was prohibited by the constitution of 1890.

3. That the court erred in holding that the consolidation of 1892 had operated to terminate the existing contract.

4. That the court erred in permitting recovery of taxes under and by virtue of revenue laws passed subsequent to the charters of 1882 and 1884, and thereby giving effect to statutes which impaired the obligation of the contract in suit.

The questions involved and the points of law or fact to be discussed may be grouped for convenience under the following heads:

I. The jurisdiction of this court.

II. The nature of the contract involved in the controversy.

III. The validity of the contract under the constitutions of Mississippi.

IV. The effect of the consolidation of the railroad companies in 1892.

I.

The jurisdiction of this court.

Motions to dismiss for want of jurisdiction and to affirm were submitted on April 24, 1899, but the decision of the motions was postponed to the argument on the merits.

This court has jurisdiction under section 709 of the Revised Statutes, because a federal question was necessarily involved in the case, and the court below could not have reached its conclusion without deciding that question. Thus, in his brief on the motion to dismiss, the defendant in error stated the grounds of the decision below as follows (pp. 10, 11):

"In these consolidated causes the Supreme Court of Mississippi decided five things:

1. That the legislature could not grant an exemption to a railroad company by name as such under said Constitution of 1869.

2. That it could not grant an irrepealable exemption under said Constitution.

3. That a new company was formed by the consolidation of October 24, 1892, and no exemption passed into it.

4. That, if the consolidation was a technical merger, still Section 180 of the Constitution of 1890 prevented any exemption from passing into it.

5. That any alleged exemption was repealed by the acts of 1884, 1886 and 1890."

This statement, while not reciting the precise grounds of the decision with accuracy, nevertheless shows conclusively that each of them clearly involved a federal question, namely, (1) whether or not there was a contract entitled to protection from impairment, and (2) whether or not the obligation of that contract had been in fact impaired. The record fails to disclose any sufficient ground of decision which would not involve the federal question, for the original validity and the present existence of the legislative contract constitute the only points of law or fact in the litigation.

But as the defendant nevertheless insisted that the court has no jurisdiction, and urged at great length many grounds on the motion to dismiss, a fuller discussion is considered necessary than would otherwise be ventured, although the labors and decisions of the court ought to have settled beyond argument most of the suggestions urged to defeat the jurisdiction.

The question as to the original validity and the true construction of the contract is, of course, one for the independent judgment of this court. This question has always been determined here independently of the decisions of the state courts, and in many cases in direct opposition to the rulings of those tribunals.[1]

[1] *Ohio Life Insurance and Trust Company* v. *Debolt*, 16 How. 416, 432; *Jefferson Branch Bank* v. *Skelly*, 1 Black, 436, 443; *Bridge Proprietors* v. *Hoboken Co.*, 1 Wall. 116, 145; *Delmas* v. *Insurance Company*, 14 Wall. 661, 668; *Railroad*

In a number of the contract cases cited in the margin, motions were made to dismiss upon the ground that the construction by the state court of its own constitution and laws was binding upon this court, but in every instance the motion to dismiss was denied. In *Yazoo Railroad Co.* v. *Thomas*, 132 U. S. 174, 184, a motion to dismiss was made upon the same ground as that urged in the case at bar. In overruling the motion, Mr. Chief Justice Fuller said:

> "The taxes in question were assessed under the act of 1888, and if the charter of the company, which became a law on the 17th of February, 1882, inhibited such taxation, then this court has jurisdiction to re-examine the conclusion reached. Although by the terms of the act of 1888 the taxes therein referred to were not to be levied as against a railroad exempt by law or charter, yet the Supreme Court held that this company is not exempt, and is embraced within the act; so that if a contract of exemption is contained in the company's charter, then the obligation of that contract is impaired by the act of 1888, which must be considered, under the ruling of the Supreme Court, as intended to apply to the company. The result is the same, although the act of 1888 be regarded as simply putting in force revenue laws existing at the date of the company's charter, rather than itself imposing taxes, for if the contract existed those laws became inoperative, and would be reinstated by the act of 1888. The motion to dismiss the writ of error is therefore overruled."

Companies v. *Gaines*, 97 U. S. 697, 709; *University* v. *People*, 99 U. S. 309, 321, 323; *Wright* v. *Nagle*, 101 U. S. 791, 793; *Louisville & Nashville R. R. Co.* v. *Palmes*, 109 U. S. 244, 256; *Memphis Gas Co.* v. *Shelby County*, 109 U. S. 398, 399; *Vicksburg, &c., Railroad Co.* v. *Dennis*, 116 U. S. 665, 667; *Giles* v. *Wright*, 117 U. S. 648, 655; *N. O. Water Works* v. *La. Sugar Co.* 125 U. S. 18, 38; *Yazoo Railroad Co.* v. *Thomas*, 132 U. S. 174, 184; *McGahey* v. *Virginia*, 135 U. S. 662, 669; *Wilmington & Weldon Railroad* v. *Alsbrook*, 146 U. S. 279, 293; *Bryan* v. *Board of Education*, 151 U. S. 639, 650; *Mobile & Ohio Railroad* v. *Tennessee*, 153 U. S. 486, 492; *Shelby County* v. *Union &c. Bank*, 161 U. S. 149, 151; *Phœnix Insurance Co.* v. *Tennessee*, 161 U. S. 174, 185; *Douglass* v. *Kentucky*, 168 U. S. 488, 502; *McCullough* v. *Virginia*, 172 U. S. 102, 109; *Water Power Co.* v. *Street Railway Co.* 172 U. S. 475, 487; *Citizens' Savings Bank* v. *Owensboro*, 173 U. S. 636, 644, 654; *Walsh* v. *Columbus, Hocking Valley & Athens R. R.* (decided February 26, 1900); *Houston & Texas Central Railroad* v. *Texas* (decided March 26, 1900).

To the same effect is *Wilmington & Weldon Railroad* v. *Alsbrook*, 146 U. S. 279, 293.

In *Keokuk & Western Railroad* v. *Missouri*, 152 U. S. 301, which is the latest case involving the effect of consolidation upon an antecedent right of exemption from taxation, a motion was made to dismiss upon exactly the same ground as that assigned in the case at bar, namely, that the determination of the state court as to the effect of consolidation was a construction by the state court of its local constitution and laws, and was therefore binding upon this court; yet this court denied the motion to dismiss, and considered and determined the whole question upon the merits. This case is on all fours with the case at bar, and, unless overruled, furnishes a conclusive precedent in support of jurisdiction.[1]

In no class of cases has this court oftener exercised its power to determine for itself the existence and the true nature and effect of an alleged contract than in the long line of decisions involving so-called exemptions or immunities from taxation in cases of consolidation, foreclosure or reorganization. The inquiry as to whether a consolidation has resulted in the termination of any exemption or privilege or immunity enjoyed by the prior corporations, has always been deemed by this court to be essentially a federal question. From the case of *Tomlinson* v. *Branch*, 15 Wall. 460 (1872), until the present time, this court has never considered itself bound by the construction placed by the state courts upon the statutes authorizing a consolidation. Therefore, even if the state court had only decided that the rights acquired under section 21 had been terminated or lost by the con-

[1] The disposition of the motion in the *Keokuk* case is not reported, but the records in the clerk's office show that the motion was submitted March 23 and denied March 30, 1891.

solidation and that a contract no longer existed, it would clearly have rendered a decision upon a federal question, pure and simple[1], subject to full and independent review in this court.

The fact that the prevailing opinion studiously avoids reference to the subsequent statutes to which it necessarily gave effect by allowing recovery under them is clearly immaterial (*Chapman* v. *Goodnow*, 123 U. S. 540, 548; *Houston & Texas Central Railroad* v. *Texas*, decided March 26, 1900).

It was, however, insisted in the papers on the motion to dismiss that the federal question was not raised at the proper time or in the appropriate way. The contention seemed to be that the question or point ought to have been expressly "pleaded." The case is, however, included in the second class mentioned in section 709 of the Revised Statutes; and it is well established that in cases

[1]The following cases involved the creation of an alleged contract: *East Hartford* v. *Hartford Bridge Co.*, 10 How. 511, 532; *Chesapeake, etc. R. R. Co.* v. *Virginia*, 94 U. S. 718, 722; *Railroad Companies* v. *Gaines*, 97 U. S. 697, 707; *Railroad Co.* v. *Commissioners*, 103 U. S. 1, 3; *Memphis Gas Co.* v. *Shelby County*, 109 U. S. 398, 399; *Vicksburg, &c., Railroad Co.* v. *Dennis*, 116 U. S. 665, 667; *Chicago, &c., Railroad* v. *Guffey*, 120 U. S. 569; S. C., 122 U. S. 561; *Yazoo Railroad Co.* v. *Thomas*, 132 U. S. 174, 184; *McGahey* v. *Virginia*, 135 U. S. 662, 667; *Wilmington & Weldon Railroad* v. *Alsbrook*, 146 U. S. 279, 293; *Bryan* v. *Board of Education*, 151 U. S. 639, 650; *Bank of Commerce* v. *Tennessee*, 161 U. S. 134, 139; *Phœnix Insurance Co.* v. *Tennessee*, 161 U. S. 174, 175; *Douglas* v. *Kentucky*, 168 U. S. 488, 495; *Chicago, &c. Railroad* v. *Nebraska*, 170 U. S. 57, 68; *McCullough* v. *Virginia*, 172 U. S. 102, 109.

In the following cases the court determined for itself whether or not there was still an existing contract, or whether the rights acquired thereunder had been waived, or had been lost or surrendered by consolidation, or otherwise: *Morgan* v. *Louisiana*, 93 U. S. 217, 219; *Railroad Co.* v. *County of Hamblen*, 102 U. S. 273, 275; *Wilson* v. *Gaines*, 103 U. S. 417; *Louisville & Nashville R. R. Co.* v. *Palmes*, 109 U. S. 244, 256; *Memphis Railroad Co.* v. *Commissioners*, 112 U. S. 609, 617; *St. Louis, &c., Railway Co.* v. *Berry*, 113 U. S. 465, 472; *Chesapeake & Ohio Railway Co.* v. *Miller*, 114 U. S. 176; *Given* v. *Wright*, 117 U. S. 648, 655; *Keokuk & Western Railroad* v. *Missouri*, 152 U. S. 301, 305; *Mobile & Ohio Railroad* v. *Tennessee*, 153 U. S. 486, 492; *St. L. & San Francisco Railway* v. *Gill*, 156 U. S. 649, 656; *Norfolk & Western Railroad* v. *Pendleton*, 156 U. S. 667, 673; *Mercantile Bank* v. *Tennessee*, 161 U. S. 161, 171.

belonging to that class—that is to say, where "is drawn in question the validity of a statute of, or an authority exercised under a statute of, any state, on the ground of its being repugnant to the Constitution," etc.,—it is not necessary that the federal question should be expressly set up or claimed in order to give this court jurisdiction, but it is sufficient that it appear that the federal question was involved in the case, and that the case could not have been determined without deciding it. This well-established rule of practice was most emphatically reiterated in *Water Power Co.* v. *Street Railway Co.*, 172 U. S. 475, 485, where Mr. Justice Brown, referring to a state of facts quite analogous to those now presented, used the following language:

> "While no special mention is made in the complaint of the Constitution of the United States, the whole theory of the plaintiff's case taken in connection with the answer is that the rights which it acquired to the five hundred horse power in question under the act of 1887 were impaired by the subsequent act of December 24, 1892, ratifying and approving the contract of the board of directors of the state penitentiary with the defendant. The contract of the defendant is set up in the complaint, and although the act of December, 1892, ratifying the same is not set up there, it appears in the answer and is relied upon as validating the contract; so that, reading the complaint and answer together, the question whether the contract of the plaintiff was impaired by subsequent State action appears on the face of the pleadings. * * *
>
> "While, in so holding, the court disposed of the case upon the construction of the contract under which the plaintiff asserted its right, such construction is no less a Federal question than would be the case if the construction of the contract were undisputed, and the point decided upon the ground that the subsequent act confirming the contract with the defendant did not impair it. The question in either case is whether the contract has been impaired, and that question may be answered either by holding that there is no contract at all, or that the plaintiff had no exclusive rights under its contract, or granting that it had such exclusive rights, that the subsequent legislation did not impair it. These

are rather differences in the form of expression than in the character of the question involved, and this court has so frequently decided, notably in the very recent case of *McCullough* v. *Virginia*, 172 U. S. 102, that it is the duty of this court to determine for itself the proper construction of the contract upon which the plaintiff relies, that it must be considered no longer as an open question. *N. O. Water Works* v. *La. Sugar Co.*, 125 U. S. 18; *Bridge Proprietors* v. *Hoboken Co.*, 1 Wall. 116.

"TO THE ARGUMENT THAT THE FEDERAL RIGHT WAS NOT 'SPECIALLY SET UP AND CLAIMED' IN THE LANGUAGE OF REVISED STATUTES, SECTION 709, IT IS REPLIED THAT THIS IS NOT ONE OF THE CASES IN WHICH IT IS NECESSARY TO DO SO."

The statutes relied upon by the railroad companies were set forth by appropriate reference in the declaration of the revenue agent (record, pp. 10, 30, 39, 40, 42, 44, 45), and it was asked that "they be considered as part of this declaration" (*id.*, p. 10). Among those statutes is the one which constitutes the contract upon which the plaintiffs in error especially rely (*id.*, p. 42). Consequently, the declaration itself brought the charter contract before the court for adjudication. The question of its validity and of the plaintiff's right to recover taxes already paid and discharged in the manner provided in the act, could, of course, have been fully raised by demurrer if the facts showing compliance with the statute had been alleged by the plaintiff. The charter being thus before the court, it was not necessary to aver it again in the defendants' plea, the only requisite allegation in defense being of those facts which brought the railroad companies within the provisions of the statute. This allegation of the plea was made in almost the very language of the statute (*id.*, p. 55). To this plea, the plaintiff demurred, and this was one of the issues presented on the first appeal. It is, therefore, evident that, upon the face of the pleadings, the valid-

ity of the statute was necessarily involved. The nature and binding effect of the contract was urged upon the identical point now submitted (*id.*, p. 676).

Even if this were not a case of the second class, but a case within the third class—that is, involving a right, title, privilege or immunity under the Federal Constitution—this court would nevertheless hold that the federal question had been duly raised, and that the right, title, privilege or immunity had been specially set up or claimed in a proper way and in ample time (*Chicago Life Ins. Co.* v. *Needles*, 113 U. S. 574, 579; *Spencer* v. *Merchant*, 125 U. S. 345, 352; *Kaukauna Co.* v. *Green Bay &c. Canal*, 142 U. S. 254, 269; *Roby* v. *Colehour*, 146 U. S. 153, 159; *Powell* v. *Brunswick County*, 150 U. S. 433, 439; *Chicago, Burlington &c. R'd* v. *Chicago*, 166 U. S. 226, 231; *Green Bay &c. Canal Co.* v. *Patten Paper Co.*, 172 U. S. 58, 66).

When, upon the first appeal, the Supreme Court of Mississippi overruled its prior decisions and announced a new construction of its constitution, the plaintiffs in error at once filed a suggestion of specific errors before final judgment was entered (record, p. 518), specially setting up and claiming the contract right under the Federal Constitution.[1] They were entitled as of right to have these suggestions considered and determined before the issuance of a mandate. The practice is not at all similar to an application for a rehearing, the grant of which is discretionary; but the right to have an adjudication upon the suggestion of errors is absolute. The difference

[1] The suggestion of errors was filed June 27, 1898, and the full opinion of the Supreme Court of Mississippi was not filed until November 22, 1898. Thus the court below had the suggestion of errors before it for five months and undoubtedly considered it in preparing the definite opinion on the first appeal.

is distinctly recognized in the rule printed in the margin.[1]

Moreover, in all cases which hold that it is too late to raise the federal question on an application for a rehearing, it appeared that such an application was made after the very decision sought to be reviewed and not after a decision on a first appeal upon which no final judgment could be rendered and which could not be brought to this court for review. The result of the first appeal in this case was not a final judgment, or even a mandate directing specific further proceedings, such as an accounting. The language was: "The judgment is reversed both on appeal and the cross-appeal, and verdict set aside, and the cause remanded for a new trial" (record, p. 676). Either party on such new trial could interpose any evidence and advance any argument within the pleadings. Upon the new trial, the plaintiffs in error attempted specially to set up and claim the protection of the Federal Constitution, although it was really sufficiently raised under the pleadings as they stood. This attempt was made out of extreme prudence and in order to narrow the real issues. The court struck out the pleas *as presenting no defense*, and this ruling was sustained by the Supreme Court of the state.

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[1] Under the practice in the Supreme Court of Mississippi, there is a clear distinction between a petition for a reargument and a suggestion of error, the latter being presented to and considered by the court as of right. Rule 10 of the Supreme Court of Mississippi is as follows: "Petition for reargument—suggestion of error. Applications for reargument shall be presented in open court by petition, and noted on the minutes of the court on or before the Monday succeeding the delivery of the opinion; and no reargument shall be granted upon any point or question not distinctly made and insisted upon at the original hearing or submission of the cause. No extension of the time for making such application will be granted except on account of sickness or other extreme cause. The court will, at any time during the term at which a judgment is rendered, consider a written suggestion of error of law or fact therein, and will take such action as may seem proper" (70 Miss. XXII.).

But whether or not an amended answer or plea could properly have been set up then is immaterial. The question is whether this court will consider that the federal question has been duly set up or claimed when, as in this case, upon a new trial on the issues and merits, the party specially sets up and claims the right, and his pleas are stricken out by the trial court as presenting no defense, which ruling is duly excepted to and is subsequently affirmed by the highest state court on the same ground. Of course, no particular form of words need be used in order to raise the federal question; nor is it necessary that it should be raised in the original pleading or in any pleadings at any particular time. All that is necessary is that before final judgment below, there shall be "something in the case before the state court which at least would call its attention to the federal question as one that was relied on by the party" (*Dewey* v. *Des Moines*, 173 U. S., 193, 199). It affirmatively appears by the record before this court, as well as by the certificate of the Chief Justice of Mississippi (record, p. 690), that the federal question was raised before final judgment in the appellate court on the first appeal, and months before its final opinion thereon was delivered; that it was specially set up and claimed in the court of original jurisdiction on the new trial, and that it was likewise before the Supreme Court of the state on the appeal which resulted in the judgment now before this court for review.

It was also urged on the motion to dismiss that, as this is a writ of error from a judgment rendered on a second appeal, the rule is that what could have been examined and decided on the first appeal is *res adjudicata* and cannot be examined and decided on a second trial or on a second appeal. It is quite

true that the federal question could have been examined and decided on the first appeal, and that, as matter of fact, it was actually examined and decided. But, even if this were not so, it does not in any way affect the question here. It is the statutory right of a defendant in Mississippi to amend his pleadings and set up new defenses at any time before verdict (*Railroad Co.* v. *King*, 69 Miss., 852; *Millsapps* v. *Bank*, 71 Miss., 361, 378; *Taylor* v. *Chickasaw Co.*, 74 Miss., 23).

The rule is well established that where a new trial is ordered upon the merits—not, as in *Mutual Life Insurance Co.* v. *Kirchoff*, 169 U. S. 103, simply to take an accounting—the whole case is open to a party to make any point that may properly be presented under the original or amended pleadings.

Moreover, this entire argument as to the effect of the judgment on the first appeal as *res adjudicata* is somewhat difficult to follow. It seems to lose sight of the fact that no writ of error could have been issued from this court to review the first judgment because it was not final. If the theory of the defendant in error be correct, the result would be to deprive a litigant of relief in this court in every case in which a first appeal results in a reversal and new trial, upon which, of course, no writ of error would lie from this court, and the second appeal is decided against him on the ground that the law has been settled on the first appeal and is practically *res adjudicata.* In *Great Western Telegraph Co.* v. *Burnham*, 162 U. S. 339, 343, the misconception of the decisions of this court upon this point is explained and cleared by Mr. Justice Gray.

But the point is certainly without force as respects the taxes of 1896 and 1897. As to these taxes, the railroad companies had but one hearing in the circuit court and

but one appeal to the state supreme court. When the suits were consolidated on July 4, 1898 (record, p. 610), after the reversal of the original judgment, there had been no trial in the circuit court and no adjudication by the appellate court respecting these taxes. It was, therefore, the duty of the circuit court to receive and consider any defense which might be interposed to these taxes, irrespective of the action of the appellate court in other cases. The consolidation order expressly preserved all rights. Thus (*id.* p. 610):

> "This order is made to save the expenses and inconvenience of separate pleadings and trials in each case, and is not to be construed to the prejudice of either party, and all objections and exceptions are reserved which could be reserved if said orders, proceedings, and pleadings were all separate."

The defendant in error, nevertheless, now asks this court to hold that the practical effect of the consolidation order was to deprive the defendants of an existing ground of defense, because that point was not made on the trial of the first three cases. This suggestion hardly needs further comment.

The case of *Mutual Life Insurance Co.* v. *Kirchoff*, 169 U. S. 103, is not in point. In that case it was claimed that a right or title under the Constitution of the United States was involved, which, however, was not set up or claimed until after a decision in the highest court of the state on the merits settling all the questions. There was no new trial directed, but simply an accounting, and, as this court pointed out (at p. 112), "there was no contention that any federal question arose on the accounting itself." In the case at bar, the federal question was necessarily involved in the new trial on the merits.

It was further contended on the motion to dismiss that the federal question was waived by the withdrawal of certain pleas and the entry of judgment *nil dicit*. This position is

untenable. Immediately upon the filing of the mandate ordering a new trial, plaintiffs in error asked for time in which to prepare additional pleas, and the court granted the application (record, p. 608). The pleas were prepared and were actually filed in open court in the presence of counsel for the defendant in error and without objection (*ib.*). The pleas thus appear, as stated in the transcript (p. 551), to have been filed, "leave of court having been first obtained." These pleas set forth in full detail the federal questions involved (pp. 566, 567, 594). The defendant in error—*i. e.*, the plaintiff below—thereupon moved to strike out the pleas upon grounds set forth at pages 606 and 607 of the record, and the court granted the motion, "to which the defendants then and there excepted and the exception was allowed" (p. 608). The motion was granted upon the ground that these pleas presented no defense; and this ruling was sustained on appeal by the Supreme Court of Mississippi upon that ground, as follows (record, p. 685):

> "The court's action in striking out the special pleas stricken out was correct, *for the obvious reason that they presented no defense to the action, in whole or in part.*"

Among these pleas thus stricken out was the fourth plea, which fully and distinctly alleged a compliance with the requirements of the charter (*id.* p. 568). The appellate court did not hold or intimate that the effect of these pleas was lost or given away by the judgment *nil dicit.* An examination of the pleas will show that they covered the whole case and the federal question in all aspects; and, when they were stricken out as presenting no defense to the action in whole or in part, there was no issue left to try. There can be no doubt whatever upon this point.

The trial court having decided that the plea of the

charter agreement and its impairment in violation of the contract clause of the Federal Constitution presented no defense, the plaintiffs in error, in accordance with the local practice, withdrew their remaining pleas and appealed upon a special bill of exceptions (*id.* pp. 608, 609), which presented the question of law whether or not the special pleas so setting up the federal question did or did not present a defense to the action. The judgment below clearly shows that the pleas involving the federal question were not withdrawn, for it says (*id.* p. 630) "not including, however, the pleas which have been stricken out by the court," and those pleas were stricken out because they presented no defense to the action in whole or in part. It would, of course, have been futile to continue litigating the fundamental federal question in the face of a ruling by the court that as matter of law the defense was unavailing.

To say, as defendant urged on the motion to dismiss, that the judgment in this case is the equivalent of a default or consent judgment is unwarranted and unreasonable. It is no more than if these plaintiffs in error had demurred to a declaration which properly set forth all the facts and the court had overruled the demurrer with leave to answer or to go to trial upon the merits. The defendant, of course, would have a perfect right to appeal from the judgment rendered upon the trial of the issue of law.[1]

What was done in this case was practically the same

[1] In *Ker* v. *Illinois* 119 U. S. 436 (a criminal case) it appeared that the defendant during the trial presented a plea in abatement which was overruled, and, "the defendant refusing to plead further, a plea of not guilty was entered for him, according to the statute of that State, by order of the court, on which the trial and conviction took place." The plea in abatement set forth the alleged Federal right claimed to be involved. This question was held to be preserved by these proceedings, and the judgment of the Supreme Court of Illinois was considered and affirmed upon the merits. See also, *Argentine Co.* v. *Terrible Co.* 122 U. S. 478, 479; *Coburn* v. *Cedar Valley Land Co.*, 138 U. S. 196, 221; *Clyde Mattox* v. *United States*, 146 U. S. 140, 147; *Perego* v. *Dodge*, 163 U. S. 160, 164.

as resting on a demurrer; and that was what the trial court understood was being done, and what the appellate court in affirming the judgment understood had been done when it sustained the ruling below on the ground that the pleas "presented no defense to the action, in whole or in part." Had the court not so ruled, the plaintiffs in error would have gone to trial on the merits. It would indeed tend to introduce most unfair practice, in cases where a defensive pleading has been stricken out on the ground that it presents no defense, if this court should uphold a claim that the pleading might have been stricken out upon technical points of local practice which the court below did not assign in depriving the party of his rights, but on the contrary held to be untenable. This is, moreover, a mere question of practice. It cannot be urged here for the first time; and it is perfectly manifest that it was either not urged in the state appellate court on appeal there, or else, if urged, was denied. The appellate court stated its reasons in full for the affirmance, and no such ground is even alluded to (record, p. 638).

It has also been claimed that the case should be dismissed because a citation was not issued to certain assessors and tax collectors who were not parties to the judgment appealed from. It should hardly lie in the mouth of the defendant in error to assert in this court that the proceedings instituted and conducted by him below were not effective for want of necessary parties; for, if the parties were necessary here, *a fortiori*, they were necessary below.

But these assessors and tax collectors were not parties to the original suits. The only persons named as parties in the declarations were Adams, state revenue agent, plain-

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tiff, and The Yazoo and Mississippi Valley Railroad Company and the Illinois Central Railroad Company, defendants (record, pp. 2, 70, 99, 611, 622). It is true that the declarations concluded with a formal allegation that the assessors and tax collectors are made parties, and with a prayer "that they and said defendants be summoned, &c." (*id.* pp. 11, 83, 106, 618, 629). But the record does not show that these officials were ever actually summoned, and none of them appeared or was represented upon the trial of the action. No evidence affecting them was adduced. No relief was asked against them. None of them joined in the appeal to the state appellate court, nor was made a party appellee therein. On the first appeal, when the revenue agent was himself an appellant, he did not make any of them parties to his appeal (*id.*, p. 506). The final judgment of the circuit court, entered July 8, 1898, is in form a common-law judgment in favor of Adams against the two railroad companies and no others (*id.*, pp. 629-632); and the final judgment of the Supreme Court of the state now under review is also in form a common-law judgment in his favor against the two railroad companies and the sureties upon the appeal bond, and no others (*id.*, p. 688).

It will also be observed that the question affecting the assessors and tax collectors involves nothing which could be the subject of discussion or decision in this court (*Murdock* v. *City of Memphis*, 20 Wall. 590, 615). No possible judgment could under the law have been rendered in their favor, and the only relief possible against them is upon a collateral point, namely: "If it shall appear that the failure of the tax-payer to properly pay his taxes was caused by any willful default or negligence of the assessor or tax-collector, judgment shall be rendered against the

defaulter or defaulters for the amount of compensation of the revenue agent" (appendix, p. xii).

The court has recently settled this question upon very similar facts in *Central Loan & Trust Co.* v. *Campbell*, 173 U. S. 84, 90, where Mr. Justice White said:

> "On the threshold it is necessary to dispose of a suggestion of want of jurisdiction made by the appellee. It is based on the proposition that as the intervenors in the trial court are not made parties to this appeal, we are without jurisdiction, since the judgment to be rendered may materially prejudice their rights. *But the intervenors did not except* to the action of the trial court in vacating the attachment and dismissing the action. *They were not made parties to the proceedings in error* prosecuted from the judgment of the trial court to the Supreme Court of the Territory. In that court the cause was determined without any suggestion, so far as the record discloses, that the questions arising on the record could not be decided in the absence of the intervenors, and the Supreme Court of the Territory manifestly assumed that the intervenors were not essential parties to a determination of the controversy before it, since it passed on the case as presented without their presence. *If their absence was treated by the parties to the proceedings in the Supreme Court of the Territory as not affecting the right to a review of the judgment of the trial court, there can be no reason why we should now hold that the presence of such intervenors is necessary on this appeal, which has solely for its object a review of the judgment rendered by the Supreme Court of the Territory.* Considering the facts just stated, and the further fact that it is obvious that the rights of the intervenors cannot be prejudiced by a review of the action of the Supreme Court of the Territory in dismissing the cause for want of jurisdiction, the motion to dismiss is overruled."

See, also, *Cox and Dick* v. *United States*, 6 Pet. 172, 182; *Forgay et al.* v. *Conrad*, 6 How. 201, 203; *Payne et al.* v. *Niles et al.* 20 How. 219; *Brewster* v. *Wakefield*, 22 How. 118, 129; *Germain* v. *Mason*, 12 Wall. 259, 261; *Simpson* v. *Greeley*, 20 Wall. 152, 157; *Basket* v. *Hassell*, 107 U. S. 602, 608; *Hanrick* v. *Patrick*, 119 U. S. 156, 164; *Gilfillan* v. *McKee*, 159 U. S. 303, 312.

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The federal question was, therefore, duly raised, and the jurisdiction of this court to review the final judgment is clear.

II.

The nature of the contract involved in this controversy.

In the case at bar, the Yazoo Company does not deny liability to pay taxes upon the portion of its railroad formerly belonging to the Louisville, New Orleans and Texas Company. Far from it. Nor does the provision under consideration purport to exempt the railroad company from taxation. On the contrary, the railroad company is left subject to all manner of taxes, which, to the amount of hundreds of thousands of dollars, have been year after year actually assessed. Some of these taxes have been paid in cash (record, pp. 90, 107, 179), and part of them are now sought to be collected in this consolidated suit. The defense is that the amount of these taxes has been duly and actually paid and discharged by payments on account of construction debt. The contract relied on, far from exempting, simply provides that all the taxes to which the railroad might be subjected for twenty-five years shall be appropriated and applied to the repayment or reimbursement of such part of the cost of building as the company might have to borrow or become indebted for. The right to tax is preserved unimpaired and unlimited. The act contemplates a regular assessment and levy of all taxes. When it has been proved that an equivalent amount has been theretofore applied in actual payment of construction debt, as directed by the statute, then and only then is the appropriation made and the receipt or credit given. The railroad company is not relieved or exempted from paying any of its taxes; it is merely permitted to pay them in a particular

way by applying the amount to the payment of its construction debt, in which construction the state and its inhabitants have a very direct and tangible interest and which construction the state might itself have directly undertaken and paid for. The amount to be specified in the affidavit can not be known until the tax has been imposed. The amount of the taxes must be paid in one form or another either to the state or to construction-debt creditors. The act plainly contemplates the direct payment of the taxes assessed, in the usual and ordinary course, *unless* the company shall have been compelled, in addition to its capital stock investment, to create indebtedness for construction, and shall do two things—viz., (1) pay during the preceding year an amount equal to the taxes in discharge of its construction debts, and (2) prove such payment by making the statutory affidavit. There is nothing in this transaction to show a surrender by the state of its taxing powers. This is evident from the fact that if the company should not be burdened with a construction debt to which the taxes might be applied in good faith, or if it should fail to apply the amount of the taxes to the payment of such an existing construction debt, or even if, after the prescribed payment on account of construction debt, it should fail to make and deliver the statutory affidavit, the taxes would still be enforceable. No element of exemption would then exist or now exists. The effect of the contract is merely to appropriate the amount of a tax for certain purposes which are undoubtedly public in character. The legislature could with perfect propriety have granted aid for these purposes to any given amount and for any specified term, and could have provided that a certain amount should be paid each year. The effect

would have been exactly the same as that accomplished by this act. To paraphrase the language of Mr. Justice Strong hereafter quoted (p. 56), if the legislature can aid a railroad in its construction because it is a public use, "what difference can it make in what mode the aid be extended?" And as the Supreme Court of Mississippi itself has said (*infra*, p. 54):

> "The end to be accomplished, and not the means of its accomplishment by assistance from the municipality, is the matter to be considered; and, this being the case, it matters not what is the particular form in which the legislature authorizes the assistance to be given."

The practical effect of the contract of appropriation was not only to confer a present benefit upon the state through the general increase of property and values flowing from the construction of the road and the creation of a public improvement without cost to the state or the people, but also to confer a future benefit by adding to the taxable wealth of the state this new property, which otherwise would not have existed. Necessarily, the net earnings of such a company would be increased by the payment of so much of its debt, and the reimbursement of the construction debt would put it in the power of the state to compel lower rates of carriage (*Smyth* v. *Ames*, 169 U. S. 466, 546), and would appreciably increase the taxable value of the franchise and capital stock of the railroad company. Surely it must be evident that a railroad company whose construction debt or investment has been partly repaid by the state should be subject to lower rates of transportation than a company whose investment for construction has not been reimbursed; and likewise that the value of the franchise and capital stock to the stockholders for purposes of taxation must appreciate as the construction debt is repaid. The stock of the railroad

company in the hands of investors remained taxable during the whole period in question in this suit.[1]

In other words, the state, by the contract under consideration, undertook to aid in the repayment of the construction debt, and this undertaking tended directly to induce and secure the actual construction of the road. In fact, the builders of the railroad were advancing the amount of the taxes in order to construct a public improvement, for the construction of which the whole community might properly have been taxed. The owners of the railroad clearly remained liable for taxes to the full amount and probably to an increased amount, because of the increased value of their property resulting from the gradual payment of the construction debt. Not a dollar of taxation was exempted or remitted. The state did nothing to impair or diminish its resources or funds. The only sum appropriated consisted of taxes thereafter to be levied upon property which, but for the appropriation, might, and humanly speaking would, never have existed. In this indirect way, there was accomplished what no one can doubt might have been effected by a direct and undisguised donation or grant of state funds.[2]

The legislature of Mississippi could indisputably have appropriated or donated, or agreed to appropriate or donate, any taxes in a lump sum or in annual instalments to reimburse and pay for the cost of constructing a railroad as a public work of internal improvement, or the legislature could have provided that construction bonds should be receivable for taxes. Instead of adopting this course, a contract was made with the creditors, bondholders and stockholders of these railroads, that, if they would advance the

[1] Code 1892, sec. 3744.

[2] The state legislature in 1871 passed a subsidy act (ch. 359) donating $4,000 per mile to any railroad building in the state.

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money necessary for making the improvement and risk it in the enterprise, and if they found it necessary to incur construction debt, such construction debt would be repaid to them gradually out of a special fund made up of taxes on the new property they themselves were creating, and in an annual amount equal to the taxes actually imposed until the construction debt was discharged. The state thus risked absolutely nothing; it retained unimpaired its full powers of taxation; it exempted or released from taxation no existing or future property; it simply agreed to appropriate a sum annually to pay off the construction debt of a necessary public improvement.

Nor is the argument affected by the circumstance that the result of such an appropriation and application of the taxes may be to reduce the railroad company's construction debt, for which it is primarily liable. This court has decided the contrary. In *Pacific Railroad Company* v. *Maguire*, 20 Wall. 36, 44, an absolute exemption from taxation for a limited period had been conferred upon a railroad company. Subsequently, the people of the state adopted, as part of the state constitution, an ordinance taxing the gross receipts of the company, and providing that the proceeds of the tax should be appropriated to the payment of certain bonds of the state lent by it to the company, and upon which, as between the state and itself the company was liable. It was claimed that this legislation did not impose a tax, as such, since it merely applied the income of the company to the payment of debts which were alike debts of the state and of the company (argument for defendant in error, 20 Wall. 41). The court held that the ordinance in question clearly imposed a tax, and that the contract of exemption relieved the company

therefrom. This case is express authority for the proposition that, in the case at bar, section 21 in fact provides for taxation as such and for nothing else, and does not exempt the railroad company from taxation notwithstanding the appropriation of the tax to the payment of its construction debt.

When, in 1882, the appropriation of taxes now sought to be enforced was made, similar appropriations had been granted to at least forty-four railroad companies, and such a contract of appropriation had been repeatedly upheld as valid by the highest court of the state. It is true that the court, in reasoning upon the question, had expressed the idea that the provision constituted a repealable exemption; but whatever may have been the reasons assigned, the fact is indisputable that the court had held such contracts to be valid. It is perfectly well settled in this court that the reasons assigned for an opinion are not controlling, but that the touchstone is rather to be found in the exact point decided. In these Mississippi cases the exact point decided was that such a contract was valid under the constitution of Mississippi.

In *Mississippi Mills* v. *Cook*, 56 Miss. 40, 50 (decided in 1878), the Supreme Court of Mississippi, construing the state constitution of 1869, decided that a statute providing in terms similar to those employed in section 21 for the appropriation of taxes against manufacturing corporations to the payment of their construction debt was valid. This case was followed in *Vicksburg Bank* v. *Worrell*, 67 Miss. 47, 58 (decided in 1889), and *Attala County* v. *Kelly*, 68 Miss. 40, 44 (decided in 1890). In *L., N. O. & T. Ry. Co.* v. *Taylor*, 68 Miss. 361, 365 (decided in 1890), the company formed by the consolidation of 1884 was held entitled to the advantages of section 21. In *McCulloch*

et al. v. *Stone*, 64 Miss. 378, 393 (decided in 1886), the court had under consideration the same provision for appropriation of taxes in the charter of the Louisville, New Orleans and Texas Railway Company as that now involved, and, while in effect conceding the general validity of the agreement, held that it did not apply to taxes upon lands disconnected from the business of the company.

But the court will observe that the ruling below does not give the railroad company the benefit of the grounds of decision assigned by the Supreme Court of Mississippi for upholding the validity of such legislation as constituting a repealable exemption. On the contrary, the very grounds assigned in the prior opinions are repudiated and the decisions overruled. The reason why the court below was urged to overrule its prior decisions as to the validity of exemptions under the old constitution was to enable the recovery of taxes for the ten years prior to the consolidation. This recovery required the rooting out of every ground of decision which would uphold the validity of these contracts. There is pending in the Supreme Court of Mississippi, as appears from cases now on the calendar of this court and to be argued immediately after the case at bar, litigation in which the state revenue agent is seeking to recover taxes for many years prior to the consolidation on the ground that all exemptions were invalid and not merely repealable.

From 1870 until 1884, covering the whole period of the state's necessity for the building of railroads, we find the legislature constantly drawing and emphasizing the distinction between an appropriation or donation of taxes and an exemption from taxation. Thus during these fourteen years we find forty-four distinct and separate railroad charters containing a contract in the form of section

21 for an appropriation of taxes, and, during the same period, forty-two distinct and separate railroad charters granting exemptions.

Conclusive evidence of the distinction observed by the legislature between a contract of appropriation, such as is contained in section 21, and an exemption from taxation, such as is contained in the many charters cited in the appendix, is found in chapter 37 of the laws of 1880 (p. 177), where the legislature, referring to the statute under consideration in *Mississippi Mills* v. *Cook*, as amended, expressly repealed the requirement of an *assessment* of taxes and the making of an affidavit showing the application of taxes, and in terms declared that the property of the corporation should be "exempt from taxation," thus evincing a clear recognition that the contract of appropriation did not operate as an absolute exemption, but, on the contrary, left the corporations concerned subject to burdens of such a character in respect of taxes as to cause applications to the legislature for relief. The same legislature of 1880, referring to the charter of the Mobile and Northwestern Railroad Company in which section 21 originally appeared, used the following language:

> "Whereas, the charter of the Mobile and Northwestern Railroad Company . . . *donated* to said company all taxes to which said company might become liable,"

and proceeded to "release" to the company taxes for certain years (appendix, p. xxi).

The fundamental inquiry in this case is, of course, to ascertain the intention of the legislature, and this court will ascertain and determine that intention for itself, to be gathered from the unambiguous language used in the various statutes. Did the legislature consider the

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contract of appropriation or donation to be the equivalent in substance and effect of an absolute exemption, or did it consider and intend an essential and distinct difference? Was it the intention of the legislature to exempt from taxation, or was it its intention to appropriate or donate taxes or public funds conditionally to reimburse construction debt? These are the controlling questions. There might have been some necessity for disguise before 1878, but after the highest court of the state had declared that the constitution of 1869 did not prohibit exemptions, there was no longer any necessity for disguise or subterfuge. Prior to that decision, there might have been some reason for attempting to circumvent or nullify a constitutional inhibition against exemptions; but when the highest court of the state had declared the existence of the power to exempt, the legislature had no longer any conceivable necessity for attempting to hide its true purpose. Yet, at every session from 1878 to 1884, the legislature exempted from taxation in many cases, as will be seen by the statutes cited in the appendix at pp. xvii to xx, and at the very same sessions while granting exemptions it also enacted provisions for the appropriation or donation of taxes, and thus repeatedly declared and emphasized its understanding of the essential difference between the two forms or methods of legislation. Every presumption then must be in support of the view that the legislature honestly and truthfully intended a difference between an appropriation of taxes and an exemption.

In view of the reasonable certainty that the legislature did contemplate and intend a difference between an exemption on the one hand and an appropriation or donation of taxes on the other hand, it cannot be within the judicial

province to disregard that difference or to refuse to effectuate the purpose which the legislature saw fit to attempt to accomplish. As Mr. Justice Peckham said in *McHenry* v. *Alford*, 168 U. S. 651, 664:

> "Does not this different language import, clearly and plainly, a different intention?"

And speaking of the effect to be given by the judiciary to legislative provisions which differ in form and of the inferences or deductions to be drawn from such difference, Chief Justice Marshall, in *Pennington* v. *Coxe*, 2 Cranch 33, 59, said:

> "Those political motives which induce the legislature to select objects of revenue, and to tax them under particular circumstances, are not for judicial consideration. Where the legislature distinguishes between different objects, and in imposing a duty on them evidences a will to charge them in different situations, it is not for the courts to beat down these distinctions on the allegation that they are capriciously made, and therefore to be disregarded. It is the duty of the court to discover the intention of the legislature, and to respect that intention. Where the provisions of two acts are so unlike each other, that the comparison exhibits only a contrast, instead of saying that their opposing regulations were designed to be similar, it would seem much more reasonable to say that the one act exhibits a legislative mind materially variant in the particulars where the difference exists from what is exhibited by the other."

The chief contention of the defendant in error is that the contract of appropriation was equivalent in all respects to an exemption for a stated period, or as long within the period as might be necessary to pay and discharge the construction debt; in other words, that the provision was merely an exemption from taxation. This contention would lead to the conclusion that the state legislature deliberately, session after session, set traps for investors, most of them citizens of other states, by inducing them to rely upon its promise to appropriate and set apart taxes as a fund to pay some part of the construction debt

necessarily incurred in providing the state with a much-needed public property, while all the time its purpose was to fraudulently circumvent the state constitution and ultimately to repudiate the obligation. In view of the long-continued practice of the Mississippi legislature, it should truly require most conclusive evidence of such an illegal and unconstitutional purpose, and such a conclusion should only be adopted when no other is open. The argument seems to be that the form of the provision of section 21, first enacted in 1870 and re-enacted by almost every legislature in at least forty-four railroad charters between that time and the grant in suit, was from the beginning a mere sham or disguise for the purpose of evading the constitution of 1869. In support of this view, some language from the opinions of the Supreme Court of Mississippi is quoted. But, of course, the questions whether or not there is a distinction between a contract of appropriation of taxes and an exemption from taxation, and whether or not the provision was a sham or subterfuge, a fraud and a snare, constitute the very matter which this court is bound to determine for itself. The duty imposed upon this court to enforce contracts honestly and legally made would be vain and nugatory if in these contract cases it were bound to adopt the views of the state judiciary or to follow the changes in judicial decisions or state policy, or to be guided by speculations as to possible fraud or illegal intention on the part of the legislature. On the contrary, this court considers itself precluded from any such investigation of legislative motives, and forms its own independent judgment as to the true scope and purpose of a statute and the legal effect of its provisions from the language used, and nothing else when the language is unambiguous.

Moreover, when the constitution of 1890 was adopted the framers were well aware that for twenty years the legislature of the state, as an inducement to securing the investment of capital in railroad enterprises, had frequently made appropriations of taxes in aid of the construction of railroads, and that the legislature had also granted numerous exemptions to railroad corporations. The subject of the various forms of aids or grants to private corporations was particularly before the framers, and was debated at length. They knew, what was notorious, that certain railroad companies were then and for years had been paying their taxes by applying the amount to the payment of construction debt, and that other railroad companies were enjoying out and out exemptions from taxation. Nevertheless, in framing the constitution of 1890, it was seen fit to curtail the power of exemption, but leave untouched and unimpaired the power of the legislature to vote taxes in aid of public improvements just as it had been doing in the past.

In the new constitution we find many express provisions covering numerous aspects of aids or grants or donations by state or municipalities to corporations; but we find nothing in restriction of grants by the legislature of state taxes, which every one knew it had been the custom of the legislature to grant. The fact that this power of the legislature was not attempted to be restricted must strike the court as significant and persuasive in the extreme. The principal sections of the constitution showing that the legislature had this subject in mind are quoted at length in the appendix. It will be seen that the subject of donations was provided for in section 66 and distinctly sanctioned. Among all the express prohibitions contained in sections 91 to 101, the only prohibition of grants is

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that "lands belonging to, or under the control of, the state, shall never be donated directly, or indirectly, to private corporations or individuals, or to railroad companies." Section 183 provides that no *municipal corporation* "shall hereafter become a subscriber to the capital stock of any railroad or other corporation or association, *or make appropriation* or loan its credit in aid of such corporation or association," but the state legislature is not inhibited from making such appropriations excepting that *continuing appropriations* may not exceed four years and six months, under section 64.

By section 258 the credit of the state was not to be pledged or loaned in aid of any person, association or corporation, which was a re-adoption of a similar provision in the constitution of 1869, but the power to grant or appropriate taxes in aid of the building of railroads was left unimpaired and unchallenged, except as to continuing appropriations thereafter made.

It cannot be reasonably doubted that, if it was the purpose of the framers of the constitution of 1890 to challenge the validity of or to prevent appropriations of taxes in the future, as had been the long-continued practice under the constitution of 1869, some provision would have been inserted in the new constitution covering that point and putting an end to the practice. The framers knew that the legislature had repeatedly declared a difference between an appropriation of taxes and an exemption. If it was not intended to acquiesce in this legislative practice of appropriating taxes, a provision changing or prohibiting the practice would certainly have been inserted. The effect of the practical construction under the constitution of 1869 and the clear evidence of acquiescence in such construction

must lead to the conclusion not only that appropriations of taxes were authorized under the old, but that they might be continued under the new constitution. No rule of interpretation is better settled in this court. In *The Laura*, 114 U. S. 411, 416, Mr. Justice Harlan, citing *Stuart* v. *Laird*, 1 Cranch, 299, 308, said:

> "Touching the objection now raised as to the constitutionality of the legislation in question, it is sufficient to say, as was said in an early case, that the practice and acquiescence under it, 'commencing with the organization of the judicial system, affords an irresistible answer, and has indeed fixed the construction.'"

And in *Ogden* v. *Saunders* 12 Wheat. 213, 290, Mr. Justice Washington said that the doctrine

> "proceeds upon the presumption, that the contemporaries of the constitution have claims to our deference on the question of right, because they had the best opportunities of informing themselves of the understanding of the framers of the constitution, and of the sense put upon it by the people when it was adopted by them."

See, also, *Briscoe* v. *The Bank of the Commonwealth of Kentucky*, 11 Pet. 257, 318; *Auffmordt* v. *Hedden*, 137 U. S. 310, 329; *Schell's Executors* v. *Fauché*, 138 U. S. 562, 572; *McPherson* v. *Blacker*, 146 U. S. 1, 27. Practical legislative construction is given great weight: *Prigg* v. *The Commonwealth of Pennsylvania*, 16 Pet. 539, 619; *Cooley* v. *Board of Wardens of Port of Philadelphia*, 12 How. 299, 315; *Field* v. *Clark*, 143 U. S. 649, 691; *Kennedy* v. *Gies*, 25 Mich. 83, 92. The Mississippi authorities are to the same effect: *Daily* v. *Swope, Guardian, etc.*, 47 Miss., 367, 383; *French* v. *The State*, 52 Miss., 759, 762; *Shotwell* v. *Covington*, 69 Miss., 735, 738; *Chrisman* v. *Brookhaven*, 70 Miss., 477, 483.

As Simrall, J., said in *Hawkins et al.* v. *Carroll Co.*, 50 Miss. 735, 752:

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"At the time of the adoption of the constitution, the power of the legislature to authorize municipal aid to these enterprises, coupled with the delegated authority of taxation, was well established, both by legislative precedents and judicial decisions in this and the other states."

And Mitchell, J., said in *State* v. *Luther*, 56 Minn. 156, 162–165:

"This amounted to a legislative construction of the constitution, which of itself would be entitled to great weight."

As was said by the Supreme Court of California in *Emery* v. *Reed*, 65 Cal. 351:

"We have frequently said that, with respect to laws passed under the late Constitution, the construction put upon them by the highest court in existence under it, would be accepted by us without regard to our own views in respect to the correctness or incorrectness of that construction."

Notwithstanding these considerations, the court below has now decided that the contract of appropriation constituted in effect and substance nothing more nor less than an absolute exemption, and that such an exemption was in conflict with the constitution of 1869. Indeed, the earnest insistence of the Yazoo Company as to the true nature of the contract in suit as a grant or appropriation of taxes, and its essential difference from an exemption, was brushed aside with only the following scanty notice in the long opinion delivered on the first appeal (record, p. 676):

"There is a rather curious proposition of counsel for the railroad companies in his brief at pp. 118 *et seq.* The argument is that what was provided by the 21st section of the Northwestern charter was not an *ordinary exemption* at all, although counsel admits that the Lambert case expressly so decided, but that it was a *contract of appropriation irrepealable* in its nature, and not an exemption at all. If counsel's contention as to this is sound, then it is perfectly plain that the claim of rule of property and vested right under former decisions of this court falls at once to the ground, for no one will contend that this court has ever treated the said 21st section as an appropriation by contract irrepealable in its nature. Counsel's construc-

> tion is therefore utterly inconsistent with the reiterated claim that the view we take is trenching upon any rule of property laid down in any previous decision rendered by this court. This is the first time that such a construction was ever presented to this court or asserted in any form."

It is a significant circumstance that the opinion of the majority below, although of great length and marked by an extraordinary warmth of argument, attempts no discussion of what is undoubtedly the vital inquiry in this controversy, namely, whether section 21 created an exemption from taxation or made a lawful appropriation of taxes for the purpose of discharging obligations which the state could have incurred if it had itself undertaken the construction of railroads as necessary public improvements. To say either that counsel in suggesting this important and controlling consideration abandoned all they had previously contended for, or that no such construction of the statute in question was ever before presented, is quite inaccurate. The point was reserved in the *Lambert* case. The failure or refusal to meet the point, when taken in connection with the court's eagerness upon all other branches of the case, suggests an inability to meet it. It is, of course, possible for any tribunal dogmatically to assert that the language of a statute, however plain, does not mean what its words fairly import, and thus resting on its own *dixit* defy all argument; but that position should not be the refuge of courts administering justice under the system of jurisprudence which obtains in this country.

If the statute be approached in a judicial spirit rather than with the assumption that it is a "thin disguise" for a tax exemption, there is no difficulty in perceiving that it is exactly what its language declares it to be, that is an appropriation of taxes to the discharge of existing

obligations, and not in any sense a statute conferring immunity from taxation.

There is no ambiguity in the language employed. Consequently, the language used by the legislature is binding upon the courts and their only guide to the true solution of intention. "'*Index animi sermo.*' 'The court knows nothing of the intention of an act, except from the words in which it is expressed.' . . . It is upon this ground that the rule must have its rational foundation, which, where the words can bear but one meaning, declares that there is no room for interpretation" (Endlich on Interpretation of Statutes, sec. 8). As Chief Justice Marshall said in *Sturges* v. *Crowninshield*, 4 Wheat. 122, 202:

> "But if, in any case, the plain meaning of a provision, not contradicted by any other provision in the same instrument, is to be disregarded, because we believe the framers of that instrument could not intend what they say, it must be one in which the absurdity and injustice of applying the provision to the case, would be so monstrous, that all mankind would, without hesitation, unite in rejecting the application."

In *Lake County* v. *Rollins*, 130 U. S. 662, 670, Mr. Justice Lamar said:

> "To get at the thought or meaning expressed in a statute, a contract or a constitution, the first resort, in all cases, is to the natural signification of the words, in the order of grammatical arrangement in which the framers of the instrument have placed them. If the words convey a definite meaning which involves no absurdity, nor any contradiction of other parts of the instrument, then that meaning, apparent on the face of the instrument, must be accepted, and neither the courts nor the legislature have the right to add to it or take from it. . . . So, also, where a law is expressed in plain and unambiguous terms, whether those terms are general or limited, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction."

In *St. Paul, &c. Railway Co.* v. *Phelps*, 137 U. S. 528, 536, Mr. Justice Lamar again said:

> "Where a statute, as in this case, is free and clear from all ambiguity, we think the letter of it is not to be disregarded *in favor of a mere presumption as to what is termed the policy of the government.*"

The act declares that the railroad shall be subject to taxation; and it expressly provides that the taxes accruing thereon may be applied by the railroad company upon obligations which the state could have paid or appropriated public funds to pay. Now, is it within the province of any court to reverse the terms of this statute in order to bring the law within the inhibition of a constitutional provision which would otherwise not apply, because of a supposed intention of the legislature to grant the equivalent of an exemption and thus to circumvent the constitution? The fair proposition to consider—the only one the courts can properly consider—is: Admitting that the statute authorizes an appropriation or commutation of taxes, as it purports to do, is the act in that aspect a lawful statute? If so, then did its benefits pass to the new company by virtue of the consolidation of 1892? The motive of the legislature, even though it were to grant the equivalent of an exemption, is immaterial. That it did not deem the provision the equivalent of an exemption is clear beyond reasonable doubt.

Looking merely to the legislative declaration as the only safe guide or evidence of intention, it must be conceded that the statute is not in terms or essence an exemption statute. It is argued, however, that, as its ultimate *effect* is practically to exempt the road from paying taxes, it therefore should be subject to the same constitutional inhibitions as an exemption statute and may be nullified as such. This objection, evading, as it does, the primary and fundamental question, is not well taken, because the *effect* of the statute, either in its bearing

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upon the railroad company or upon the state, is not, in any true sense, the same as that of an exemption statute. It is true that section 21 is beneficial to the railroad company and its creditors. That much it has in common with an exemption statute. But the same would be true of any statute which conferred a bounty upon or subsidized the road or gave it any other peculiar advantage; and it has not been contended that this element could render any such statute unconstitutional.

The differences between a statute appropriating or commuting taxes and a statute exempting from taxation are marked; and it will be seen at once that the benefits conferred by the former method, while considerable, are by no means commensurate with those of an outright exemption statute. Thus, as to the company, the amount that would be annually saved by an exemption statute would increase the net earnings proportionately and would be distributable to stockholders as dividends; but in the case of this appropriation of taxes, the amount of taxes goes to the company's creditors and not to the company, and does not go to swell the net earnings in any proper sense. While the payment of the company's debts, of course, ultimately redounds to the company's benefit, that result is never considered to be as advantageous as, or the practical equivalent of, an exemption. The construction debts of railroads are usually funded or re-funded in long-time bonds because large sinking-fund provisions for the annual discharge of debts necessarily imply increased annual obligations to be met out of income and consequently diminished dividends. The payment of part of the construction debt would not directly relieve the pressure of current and operating expenses.

Moreover, upon the payment of the company's con-

struction debt, which might occur within the twenty-five years, or in the contingency that the capital of the road might alone prove sufficient for its construction, the benefits of the act would terminate, while in the event of an exemption law, so long as the act remained unrepealed, the benefits must last the full term. This was a contingency that the legislature undoubtedly took into consideration when it elected to make an appropriation in this form and not to grant any exemption.

The advantages to the state of the present law over an exemption act were, however, much more obvious and important than the corresponding disadvantages to the company. The increased latitude in the matter of regulating rates arrived at by a cancellation of the company's construction indebtedness is self-evident, and has already been adverted to. It was and is undoubtedly a matter of some interest to the public that public corporations organized under domestic charters should pay their debts and thus render remote the possibility of bankruptcy. Where the stocks or bonds of the corporation are held by local investors, this is a consideration of very great importance; and, even though they be held abroad, the interest of the state would naturally be on the side of greater solvency as well as increased value of the stock for purposes of taxation. As matter of fact several counties and towns in Mississippi still own stock of the Louisville, New Orleans and Texas Railway Company (now the Yazoo Company), and this fact evinces the public policy which the state sought to forward and the local interests intended to be subserved in making the appropriations.

But these are small considerations compared with the really great object of the legislature in securing the construction of railroads, the urgent necessity for which can-

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not be disputed, and which could not be secured without outside capital. The state desired to accomplish this without taxing the community. The legislature proposed to capitalists and contractors and material-men and all others who might assist in the construction of the road and receive in return the company's promise of payment that, to the extent of the taxes receivable from the new property created with their funds, it would appropriate those taxes for the repayment of their advances. It was on the faith of this promise not only that the railroad corporation itself undertook the construction of the road and invested its capital, but that its creditors risked their funds, their materials and their labor, and it is simply common honesty, as it is to the true interests of the state, to perform the obligation in good faith. No state has ever profited by the repudiation of its plighted faith. As Mr. Justice Field said in *Hartman* v. *Greenhow*, 102 U. S. 672, 682:

> "There is no wealth or power equal to that which ultimately comes to a State when in all her engagements she keeps her faith unbroken."

III.

The validity of the contract of appropriation.

It must be very clear that considered in itself and in connection with the subject-matter of the enactment, the provision in question for the appropriation of taxes constituted a valid contract between the state and the railroad company, if not prohibited by the state constitution. The consideration is ample, and the terms of the agreement are plain and enforceable. In the absence of any limitations imposed by the state constitution then in force, there was no restraint upon the power of the state legislature to make the contract, nor upon the right of the incorporators of the railroad company to accept and insist upon its benefits. And if

the contract was valid and has not been waived or terminated, its obligation is protected by the Federal Constitution from impairment. It is, of course, now a settled rule of constitutional law that any stipulation in the charter of a corporation respecting taxation, whether constituting a grant of state or municipal funds, or providing for an appropriation or commutation of taxes, or for an entire exemption of the corporate property or stock, will be construed as an inviolable contract under the protection of the Constitution of the United States, if not in conflict with the existing state constitution, and that it will be irrevocable by any subsequent legislation, or even by an amendment of the state constitution. *State Bank of Ohio* v. *Knoop*, 16 How. 369, 378; *Home of the Friendless* v. *Rouse*, 8 Wall. 430, 435; *Wilmington Railroad* v. *Reid*, 13 Wall. 264, 266; *Humphrey* v. *Pegues*, 16 Wall. 244, 249; *Trask* v. *Maguire*, 18 Wall. 391, 401; *Pacific Railroad Company* v. *Maguire*, 20 Wall. 36, 43; *Erie Railway Company* v. *Pennsylvania*, 21 Wall. 492, 498; *New Orleans Gas Co.* v. *Louisiana Light Co.*, 115 U. S. 650, 664; *Grand Lodge* v. *New Orleans*, 166 U. S. 143, 146.

If instead of this form of contract, the state had agreed to accept in payment of taxes upon this railroad for a certain period and upon certain conditions bonds or coupons issued by the railroad company for the purpose of securing additional funds to complete the construction of this public improvement, there could be little question that this would constitute a valid contract and that the railroad company or the bondholder could enforce it. Similar provisions in bank charters that their notes shall be receivable in payment of taxes have been held to constitute valid and irrepealable contracts with the holders

of such notes, and the doctrine is now well settled (*Woodruff* v. *Trapnall*, 10 How. 190, 205; *Furman* v. *Nichol*, 8 Wall. 44, 59; *Keith* v. *Clark*, 97 U. S. 454; *Virginia Coupon Cases*, 114 U. S. 270, 279).

A broad distinction must be observed between an exemption from taxation and a contract by which the state appropriates or donates, in aid of public improvements, the proceeds of a tax regularly levied and collected; or, to put it in other terms, a contract whereby the state commutes taxes by authorizing the payment of an equivalent amount in discharge of the cost of constructing a public improvement. Unless restrained by some specific inhibition of the state constitution, the legislature had full power to grant moneys or taxes for any public improvement and especially for railroads. There was no inhibition of such grants in the Mississippi constitution of 1869, nor is there in that of 1890. The Supreme Court of Mississippi has repeatedly declared the doctrine that the building of a railroad is a public use, and that taxes may be voted and levied in aid of such a public improvement (*Brown* v. *Beatty*, 5 George 227, 240; *Hawkins et al.* v. *Carroll Co.*, 50 Miss. 735, 757; *New Orleans, &c., R. R. Co.* v. *McDonald*, 53 Miss. 240, 245; *Miss. Const.* 1869, Art. 12, Sec. 14.) The same rule has always been held in this court, and prevails throughout this country (*Rogers* v. *Burlington*, 3 Wall. 654, 663; *Thomson* v. *Lee County*, 3 Wall. 327, 330; *Mitchell* v. *Burlington*, 4 Wall. 270, 273; *Railroad Company* v. *County of Otoe*, 16 Wall. 667, 672; *Olcott* v. *The Supervisors*, 16 Wall 678, 694; *Sharpless* v. *Mayor of Philadelphia*, 21 Pa. St. 147, 169; *Thomas* v. *Leland*, 24 Wend. 65, 68; *Napa Valley R. R. Co.* v. *Napa Co.* 30 Cal. 435, 436; *Stein* v. *Mayor of Mobile* 24 Ala. 591, 614).

In 1876, in the case of *New Orleans, &c., R. R. Co.* v. *McDonald*, 53 Miss. 240, 245, the question was before the Supreme Court of Mississippi as to the power of the legislature to authorize the donation of taxes to a railroad company, and it was contended that no such donation could be made under the constitution of 1869. The unanimous opinion of the court, delivered by Campbell, J., contained the following:

> "There is no just distinction between a donation and a subscription for stock in such an enterprise. To recognize such a distinction is to disregard the fundamental theory of aid to railroads; that is, not to make the municipality a stockholder for dividends on stock, or direct returns from an investment for profit, but to aid the enterprise for expected benefits to result to the public from its success. The end to be accomplished, and not the means of its accomplishment by assistance from the municipality, is the matter to be considered; and, this being the case, it matters not what is the particular form in which the legislature authorizes the assistance to be given."

The power of the state to contribute from its resources to the construction of railroads surely cannot, at this late day, be questioned. It may be safely said that every legislative body in this country has so contributed in one form or another, without which aid the development of the country would have been retarded at least half a century. Nor can it be said that the continuing form of the contribution renders it objectionable. Appropriation acts are constantly passed by Congress and other legislatures involving the future credit and revenues of the country and contemplating future appropriations.

In *Hartman* v. *Greenhow*, 120 U. S. 672, 681 (a Virginia coupon case), the identical objection here suggested was raised, taking the form that it was not within the legitimate power of one legislature "to embarrass the action of subsequent legislatures by depriving them of

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the proper control of the annual revenue;" but the court said, through Mr. Justice Field, that "the act only made provision for an annual appropriation of a portion of the revenue, derived from taxation, to the payment of existing debts; and such legislation could not be deemed a great stretch of power." It was therefore competent, for the public purposes set forth in section 21, to appropriate towards the construction of this road the future revenues of the state.

Since the case of *Olcott* v. *The Supervisors*, 16 Wall. 678, 696, it has not been doubted that taxes levied to aid in the construction of a railroad are levied for a public use and purpose. In delivering the opinion of the court, Mr. Justice Strong used language quite applicable to the present issue, as follows:

> "If there be any purpose for which taxation would seem to be legitimate it is the making and maintenance of highways. They have always been governmental affairs, and it has ever been recognized as one of the most important duties of the State to provide and care for them. Taxation for such uses has been immemorially imposed. When, therefore, it is settled that a railroad is a highway for public uses, there can be no substantial reason why the power of the State to tax may not be exerted in its behalf. It is said that railroads are not public highways per se; that they are only declared such by the decisions of the courts, and that they have been declared public only with respect to the power of eminent domain. This is a mistake. In their very nature they are public highways. It needed no decision of courts to make them such. True they must be used in a peculiar manner, and under certain restrictions, but they are facilities for passage and transportation afforded to the public, of which the public has a right to avail itself. As well might it be said a turnpike is a highway, only because declared such by judicial decision. A railroad built by a State no one claims would be anything else than a public highway, justifying taxation for its construction and maintenance, though it could be no more open to public use than is a road built and owned by a corporation. Yet it is the purpose and the uses of a work which determine its character. And if the purpose is

one for which the State may properly levy a tax upon its citizens at large, its legislature has the power to apportion and impose the duty, or confer the power of assuming it upon the municipal divisions of the State. And surely it cannot be maintained that ownership by the public, or by the State, of the thing in behalf of which taxation is imposed, is necessary to justify the imposition. There are many acknowledged public uses that have no relation to ownership. Indeed, most public expenditures are for purposes apart from any proprietorship of the State. A public use may, indeed, consist in the possession, occupation, and enjoyment of property by the public, or agents of the public, but it is not necessarily so. Even in regard to common roads, generally, the public has no ownership of the soil, no right of possession, or occupation. It has a mere right of passage. While, then, it may be true that ownership of property may sometimes bear upon the question whether the uses of the property are public, it is not the test.

"The argument most earnestly urged against the constitutionality of the act is that it attempted to authorize Fond du Lac County to assist the railroad company by a donation. It is stoutly contended that the legislature could not authorize the county to impose taxes to enable it to make a donation in aid of the construction of the railroad, even if its ultimate uses are public. But why not? If the county can be empowered to aid the work because it is a public use, what difference can it make in what mode the aid be extended?"

So, contracts commuting or releasing taxes have been sustained under constitutions expressly forbidding exemptions. In *Bartholomew* v. *City of Austin*, 52 U. S. App. 512, 530, the Circuit Court of Appeals in the Fifth Circuit held that a provision in a contract between a city and a water company, whereby the property of the latter was exempted from taxation for a term of years in consideration of the furnishing of a certain water supply, was not really an exemption, and so not violative of a provision of a provision of the Texas constitution similar in this respect to the Mississippi constitution of 1869. Pardee, C. J., said:

"We do not construe the contract as granting an exemption from taxation. Exemption means free from liability, from

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duty, from service. It is a grace, a favor, an immunity; taken out from under the general rule not to be like others who are not exempt; to receive and not make a return. This being the meaning of the term, the transaction presented in section 11 is not an exemption from taxation. The city needed the water for the several purposes named. To supply it required time, expense, and labor. These things were of value. The taxes to be levied were to be legal obligations for money. The obligations were of value. On a comparing of values, the parties being competent to contract, it was concluded that the values were equal, and the one should be set off by the other. There is no claim that the one value was not as great as the other. No imposition on the one hand or favoritism on the other, can be inferred."

In *Grant* v. *The City of Davenport*, 36 Iowa, 396, 406, a similar contract was attacked as obnoxious to a constitutional provision identical with that under consideration. The court said:

"It, in effect, applies the taxes as they would otherwise become due, in part payment or in part consideration of the water rent. The city pays the amount of money specified and the taxes on the franchise, and the property required for the management of the works, as water rent. *It might have required the payment of the taxes, and then returned the amount as part pay for water rent. The manner of doing it cannot defeat the power to do it.*"

In *Portland* v. *Water Company*, 67 Me. 135, 136, Peters, J., said, respecting a similar contract:

"Here, the action of the legislature, with the vote of the city in pursuance of it, partakes the character of a contract with the defendant corporation. The consideration for a contract on the part of the city is palpable."

The validity of a commutation of taxes was expressly sustained in *Vicksburg Bank* v. *Worrell*, 67 Miss. 47, 58, where it was assailed as violating section 13 of article xii of the Constitution of 1869, Campbell, J., saying:

"Where the particular arrangement of taxation provided by legislative wisdom may be accounted for on the assumption of compounding or commuting for a just equivalent, according to

> the determination of the legislature, in the general scheme of taxation, it will not be condemned by the courts as violative of the constitution."

The same rule was announced in *Le Blanc* v. *Railroad Co.*, 72 Miss. 669.

This court has recognized that the commutation of railroad taxes by payment of a percentage of earnings is not a release or exemption, but only a substitution of method, and that the rule of construction in cases of exemption is not applicable where that element is not found. *Northern Pacific Railroad* v. *Clark*, 153 U. S. 252, 271; *McHenry* v. *Alford*, 168 U. S. 651, 662. In referring to this point, Mr. Justice Nelson in *Chicago* v. *Sheldon*, 9 Wall. 50, 55, said:

> "We are not concerned to deal with these provisions, as it is perfectly settled by the decisions of the Supreme Court of the State that, according to the true construction of them, they do not forbid the legislature commuting with individuals or corporate bodies the burdens of general or specific taxes or assessments, of the character of those in question, for what they may deem an equivalent. This has been so frequently decided that we need only refer to the cases. (*Illinois Central Railroad* v. *County of McLean*, 17 Illinois, 291; *Hunsaker* v. *Wright*, 30 *id.* 146; *Neustadt* v. *Illinois Central Railroad*, 31 *id.*, 484)."

For the foregoing reasons, it is submitted that the provision originally embodied in section 21 of the charter of 1870 and re-enacted in 1882 for the benefit of the Louisville, New Orleans and Texas Railway Company did not constitute an exemption, but was a valid contract between the state and the incorporators which was not in conflict with any provision of the state constitution of 1869, or with any provision of the constitution of 1890. Even if it were an exemption, it would nevertheless be valid for the reasons discussed in the brief filed in No. 324, to which reference is prayed.

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IV.

The effect of the consolidation of 1892.

The effect of section 21 has been shown to be a valid grant or contract of appropriation securing to the railroad company the right to apply taxes levied upon its property during a limited period to the payment of its construction debt. This contract was not an immunity or an exemption from taxation, nor was it one of the franchises of the corporation. Technically it was not a privilege so much as a property right securing by contract the advantage of payment of the taxes in a certain way instead of directly to the state. Such a contract was not in conflict with any provision of the constitution of 1869 in force when the contract was made, nor with any provision of the constitution of 1890 in force when the consolidation or merger was effected. The further question is presented whether such a contract right can be transferred or is terminated and forfeited upon consolidation or merger. The contract was essentially a property right appurtenant to the Louisville, New Orleans and Texas Railway, and passed to the consolidated Yazoo Company just as any other property or contract right would pass. It is submitted that the benefit of the contract of appropriation vested in the consolidated company, whether the consolidation be deemed a mere merger or as the creation of a new consolidated company, and that, therefore, the effect of the consolidation upon the existence of the original corporations is immaterial.

In *Railroad Co.* v. *Lambert*, 70 Miss. 779, 790 (decided in 1893), a case involving the charter of the Natchez, Jackson and Columbus Railroad Company, which also contained section 21, it was held that the right to appropriate and apply taxes thereunder was

not lost by the sale of that company's property to the Louisville, New Orleans and Texas Company, in 1890, nor by the subsequent merger of the latter in the Yazoo Company. The court said:

> "By their charters, the Louisville, New Orleans and Texas Railway Company and the Yazoo and Mississippi Valley Railroad Company were empowered to consolidate, and the immunity claimed by the Louisville, New Orleans and Texas Railway Company, for the right to pay taxes on what was the Natchez, Jackson and Columbus Railroad Company, *was not lost by its merger* in the Yazoo and Mississippi Valley Railway Company, but *it went into that company* with all its rights, privileges and immunities as far as could be in the *merger*, and nothing was lost thereby except as necessarily resulted from the union.
>
> "Section 181 of the Constitution of 1890 has no effect as to the exemption claimed. It left the matter as if the Constitution had not been adopted. It left it alone, to rest upon legislation, unaffected by the fundamental law."

The Supreme Court of Mississippi has twice held that the consolidation of 1884 vested in the Louisville, New Orleans and Texas Railway Company all the properties of the constituent companies: *L., N. O. & T. Ry. Co.* v. *Taylor*, 68 Miss. 361, 365; *Railway Co.* v. *Blythe*, 69 Miss. 939, 945.

The authorities seem decisive that such contract rights can be transferred and will vest in the consolidated company. Since the case of *Philadelphia and Wilmington Railroad Co.* v. *Maryland*, 10 How. 376, 393, it has been the settled law in this court that, upon a consolidation of corporations, the contracts, property rights, privileges and advantages of each of the constituent companies are possessed by the new company to the extent of the road the constituent company had before occupied. Chief Justice Taney said in that case:

> "The law which authorizes these two companies to unite themselves with the plaintiff in error declares that this new corporation . . . shall be entitled within this State to all the

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powers and privileges and advantages at that time belonging to these two companies. It grants it nothing more.

"Now, as these companies held their corporate privileges under different charters, the evident meaning of this provision is, that whatever privileges and advantages either of them possessed should in like manner be held and possessed by the new company, to the extent of the road they had respectively occupied before the union; that it should stand in their place, and possess the power, rights, and privileges they had severally enjoyed in the portions of the road which had previously belonged to them. And this intention is made still more evident by the fourth section of the law, which makes the new corporation responsible for the contracts, debts, obligations, engagements, and liabilities at law or in equity of the several companies, and declares that it shall hold and be entitled to all the estate, real, personal, and mixed, choses in action, &c., belonging to or due to the several companies."

In *Tomlinson* v. *Branch*, 15 Wall. 460, 465, Mr. Justice Bradley said:

"The keeping alive of the rights and privileges of the old company, and transferring them to the new company in connection with the property, indicates the legislative intent, that such property was to be holden in the same manner and subject to the same rights as before. The owners of the property were to lose no rights by the transfer, nor was the public to lose any rights thereby. Of course, these remarks do not apply to those corporate rights and franchises of the old company, which appertain to its existence and functions as a corporation. These became merged and extinct. But all its rights and duties, its privileges and obligations, as related to the public, or to third persons, remain, and devolve upon the new company."

The rule was again recognized and applied in *Tennessee* v. *Whitworth*, 117 U. S. 139, 145, where Chief Justice Waite said:

"As early as 1850, before either the charter of the Tennessee and Alabama Company or that of the Central Southern Company was granted, this court said in *Philadelphia, Wilmington & Baltimore Railroad Co.* v. *Maryland*, 10 How. 376, 393, speaking by Mr. Chief Justice Taney, that a statute which authorized the union of two railroad companies, and secured to the united company the 'property, rights and privileges which that law, or other laws, conferred on them [the separate companies], or

either of them,' extended to the united company an exemption from taxation in the charter of one of the uniting companies, and this although it was at the same time said that 'the taxing power of the State is never presumed to be relinquished, unless the intention to relinquish is declared in clear and unambiguous terms.' This has been expressly reaffirmed in *Tomlinson* v. *Branch*, 15 Wall. 460; *Humphrey* v. *Pegues*, 16 Wall. 244; *Southwestern Railroad* v. *Georgia*, 92 U. S. 676; and the correctness of the decision was recognized in *Central Railroad & Banking Co.* v. *Georgia*, 92 U. S. 665; *Morgan* v. *Louisiana*, 93 U. S. 217; *Railroad Companies* v. *Gaines*, 97 U. S. 697, 711; *Railroad Co.* v. *Georgia*, 98 U. S. 359, 360; *Railroad Co.* v. *Hamblen*, 102 U. S. 273, 277; *Railroad Co.* v. *Commissioners*, 103 U. S. 1, 4; *Wilson* v. *Gaines*, 103 U. S. 417; *Louisville & Nashville Railroad Co.* v. *Palmes*, 109 U. S. 244, 253, and *Chesapeake & Ohio Railroad Co.* v. *Miller*, 114 U. S. 176, 185.

"From this it is clear that, under the settled rule of decision in this court, the exemption from taxation, which was one of the 'rights and privileges' of the Nashville and Chattanooga Company, formed part of the charters of the Tennessee and Alabama Company and the Central Southern Company, unless a different rule is to be applied in Tennessee, because of a supposed limitation on the popular meaning of the words 'rights,' 'powers' and 'privileges' when used in statutes, on account of a peculiar provision of the constitution of that State."

Other authorities to the same effect are: *Humphrey* v. *Pegues*, 16 Wall. 244, 248; *The Delaware Railroad Tax*, 18 Wall. 206, 227; *Central Railroad, etc., Co.* v. *Georgia*, 92 U. S. 665, 674; *Branch et al.* v. *City of Charleston et al.* 92 U. S. 677, 682; *County of Scotland* v. *Thomas*, 94 U. S. 682, 690; *Chesapeake, etc. R. R. Co.* v. *Virginia*, 94 U. S. 718, 725; *Green County* v. *Conness*, 109 U. S. 104, 106; *Wabash, St. Louis & Pac. Railway Co.* v. *Ham.* 114 U. S. 587, 595. There is nothing in these cases to indicate that the continued existence of the contract or privilege depends in any degree upon the question whether the company originally possessing

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it has become extinct or not.[1] As Chief Justice Waite said in *Tennessee* v. *Whitworth*, 117 U. S. 139, 149:

> "The question is not as to a grant of new powers, but as to the taking away of old ones."

It has already been shown that, even in the case of an absolute exemption from taxation, the rule is thoroughly settled that, the immunity having been once established, it is presumed to pass to the consolidated company, and to apply to so much of its property as comes from the constituent company possessing the immunity, provided that the consolidated company is capable of being exempted. By much stronger reasoning can the claim be supported that a property right, vested by contract, although technically neither a franchise nor an immunity, passes with the property of the company possessing it, and becomes vested with that property in the consolidated company, whether the existence of the company originally entitled to the right has been terminated or not. Such a right would no more be lost upon a merger or a consolidation than would the tangible property of the old company be destroyed.

The right to receive taxes voted in aid of a railroad passes by consolidation to the consolidated company, whether or not the proceedings have resulted in the dissolution of the corporation for whose benefit the appropriation was originally made. This is quite analogous to the point at bar. The precise question arose in *Scott et al.* v. *Hansheer, Treasurer, et al.* 94 Ind. 1, 13, where the court said:

> "In such an obligation of the township, we are of opinion that the railroad company to which the appropriation has been

[1] In *Southwestern Railroad Co.* v. *Georgia*, 92 U. S. 676, it was expressly stated that one of the consolidating companies had been extinguished, but nevertheless the exemption was held to vest in the consolidated company.

lawfully made acquires such a right and interest as, upon its future consolidation with other railroad corporations, will pass to and vest in the consolidated company. This is so, we think, whether the railroad company to which the appropriation was voted did or did not, by force of the consolidation, cease to exist as a corporation for every purpose."

To the same effect is *Pittsburgh, Cincinnati, Chicago and St. Louis Ry. Co.* v. *Harden et al.* 137 Ind. 486, 492. Lands granted by the Government to one of the constituent companies were held to pass in *Tarpey* v. *Salt Company*, 5 Utah, 494, 500. Even an apparently personal exemption of employees from military, road and jury duty has been decided to pass as a privilege to the consolidated company. *Zimmer* v. *The State*, 30 Ark. 677, 679.

So, in the case of statutes authorizing subscriptions by municipalities to the stock of railroad companies, this court has uniformly held that the interest of the corporation in the subscription and its right to receive and benefit by it are not forfeited by, but survive, a consolidation and become part of the rights and privileges of the consolidated company. In *County of Scotland* v. *Thomas*, 94 U. S. 682, 693, it was held, following certain decisions of the Supreme Court of Missouri, from which state the case came, that a charter of a railroad company giving counties the right to subscribe for stock of the company, conferred a right and privilege upon the railroad company which passed upon consolidation to the consolidated company. A subsequent constitution of the state had declared that no county should become a stockholder in, or loan its credit to, any corporation without the assent of two-thirds of the voters, but it was held that this language was prospective, and that the right and privilege of the existing company to receive such subscriptions was not affected by it. The

case is particularly in point because the new constitution, as in the case at bar, was adopted after the granting of the charter and before the consolidation; that is to say, the charter was granted in 1857, the new constitution was adopted in 1865 and the consolidation was authorized in 1869. In delivering the opinion of the court Mr. Justice Bradley said:

> "If we look at the subject in a broad and general view, it will be still more manifest that the power in question was intended to exist, notwithstanding the consolidation. The project of the railroad promised a great public improvement, conducive to the interests of Alexandria and the counties through which it would pass. Its construction, however, would greatly depend upon the local aid and encouragement it might receive. The interests of its projectors and of the country it was to traverse were regarded as mutual. The power of the adjacent counties and towns to subscribe to its stock, as a means of securing its construction, was desired not only by the company, but by the inhabitants. Whether the policy was a wise one or not is not now the question. It was in accordance with the public sentiment of that period. The power was sought at the hands of the legislature, and was given. It was relied on by those who subscribed their private funds to the enterprise. It was involved in the general scheme as an integral part of it, and as much contributory and necessary to its success as the prospective right to take tolls. Why it should not still attach to this portion of the road, as one of the rights and privileges belonging to it, into whose hands soever it comes, by consolidation or otherwise, it is difficult to see. . . . Subscription to the stock was not only a power of the county, but a privilege of the company,—being a portion of the rights and privileges which it obtained by translation from the charter of the North Missouri Railroad Company. . . . The power of the counties to subscribe being thus held to be a right and privilege of the company, in our opinion, passed with its other rights and privileges into the new conditions of existence which the company assumed under the consolidation."

In *Livingston County* v. *Portsmouth Bank*, 128 U. S. 102, 114, the court reviewed all the cases and reaffirmed

the doctrine of the last case, and quoted with approval much of the language above repeated. To the same effect see: *Town of East Lincoln* v. *Davenport*, 94 U. S. 801, 805; *County of Henry* v. *Nicolay*, 95 U. S. 619, 626; *County of Schuyler* v. *Thomas*, 98 U. S. 169, 173; *Wilson* v. *Salamanca*, 99 U. S. 499, 504; *Empire* v. *Darlington*, 101 U. S. 87, 91; *Menasha* v. *Hazard*, 102 U. S. 81, 95; *County of Tipton* v. *Locomotive Works*, 103 U. S. 523, 537; *Harter* v. *Kernochan*, 103 U. S. 562, 574; *New Buffalo* v. *Iron Co.*, 105 U. S. 73, 76; *Denison* v. *Mayor, etc., of City of Columbus* (Northern District of Mississippi), 62 Fed. Rep. 775, 777; s. c., affirmed in Circuit Court of Appeals, 69 Fed. Rep. 58, 60.

In *Green County* v. *Conness*, 109 U. S. 104, 106, it was held that where the act authorizing consolidation did not expressly declare that the rights, privileges and franchises of the consolidating company should pass over to the company with which it might become consolidated, but only that it might consolidate "with any other company upon such terms as may be deemed just and proper," the new company, nevertheless, acquired the right to receive subscriptions belonging to the consolidating company. Mr. Justice Bradley said:

> "When two companies are authorized to consolidate their roads, IT IS TO BE PRESUMED THAT THE FRANCHISES AND PRIVILEGES OF EACH CONTINUE TO EXIST IN RESPECT TO THE SEVERAL ROADS SO CONSOLIDATED. This point was considered in the case of *Tomlinson* v. *Branch*, 15 Wall. 460, and *Branch* v. *City of Charleston*, 92 U. S. 677, and was decided in accordance with this view. This being so, the authority given to consolidate, 'upon such terms as may be deemed just and proper,' would include the power to transfer to the consolidated company the franchises and privileges connected with the road, if the law itself did not have that effect."

So it has been held in the state courts as to sub-

scriptions. *Musgrove* v. *Vicksburg, etc., R. R. Co.*, 50 Miss. 677, 680, 684, 685; *Hanna* v. *The Cincinnati and Fort Wayne R. R. Co.* 20 Ind. 30; *Cantillon* v. *The Dubuque & N. W. Ry. Co.*, 78 Iowa, 48, 51; *C. K. & W. Rld. Co.* v. *Comm'rs of Stafford Co.*, 36 Kan. 121, 127; *John Hancock Mutual Life Ins. Co.* v. *Worcester, Nashua, &c., Railroad*, 149 Mass. 214, 219; *Day* v. *Worcester, &c. Railroad*, 151 Mass. 302, 308; *Swartwout* v. *Michigan Air Line R. R. Co.* 24 Mich. 389, 404; *Mansfield, Coldwater and Lake Michigan R. R. Co.* v. *Brown et al.* 26 Ohio St. 223, 238; *Hamilton* v. *Railroad Co.* 144 Penn. St. 34, 59.

There is a radical distinction between the effect of a consolidation upon the existing rights, privileges, etc., of the consolidating companies, and the power of a consolidated company to receive these rights and privileges as a new grant or as a renewal of an existing privilege or immunity. This distinction is nowhere more apparent than in the long line of decisions in this court which deal with rights or immunities claimed to have passed by a consolidation. It has been repeatedly held that a consolidation effects a union in the consolidated company of all the rights, privileges and franchises possessed by the constituent companies. But, where the consolidation has been found to result in a new corporation, the inquiry has been as to what rights and powers could constitutionally or lawfully be conferred upon the new company—just as if the state were granting a *new* charter or creating a *new* corporation in the light of the constitution and statutes as they existed at the date of the consolidation or organization of the new company. In every case in this court where it has been held that the exemption from taxation did not accrue to a consolidated company, there was an intervening constitutional or statutory provision which

either forbade a present grant of exemption or rendered the corporation subject to a general legislative power of amendment or repeal of charters by which the subsequent imposition of taxes and implied repeal of the exemption could be supported and maintained in its application to the corporation newly created. But where the original grant was valid in itself at the time of its making, and where it would be valid under the existing constitution at the time of the consolidation, there is nothing in the decisions of this court to prevent its transmission to and enjoyment by the consolidated company. The situation is the same as if one consolidating company had a claim against the state for an earned bonus. This would pass to the consolidated company, like any other chose in action. In the cases which have denied the survival or continuance of the exemption, the immunity has been forfeited, not because of the dissolution of the old company, but because of the limitations upon the powers of the new company. Therefore, the controlling question is whether the provisions of section 21 are in conflict with any part of the constitution of 1890, irrespective of the effect of the consolidation to merge the old or to create a new corporation.

The question of the effect of the dissolution or extinction of the constituent companies was not necessarily involved in *Keokuk & Western Railroad* v. *Missouri*, 152 U. S. 301, 305. The ground upon which the decision in that case rested was that the consolidated company was such a new corporation or organization as required a fresh grant of corporate powers and that it came into being subject to existing constitutional limitations. There is nothing in that case to require a decision that an exemption would necessarily cease to exist and be forfeited on con-

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solidation and the creation of a new corporation, irrespective of an intervening constitutional inhibition. It was not the intention of the court in the point actually decided to enunciate a new rule fundamentally inconsistent with the other decisions of this court. The case turned upon the inquiry whether a practically new exemption could have been constitutionally granted under the existing constitution, and not whether the old exemption had terminated or been forfeited by force of the consolidation alone.

Thus, in *Shields* v. *Ohio*, 95 U. S. 319, 324; *Railroad Co.* v. *Maine*, 96 U. S. 499, 510; and *Railroad Co.* v. *Georgia*, 98 U. S. 359, 365 (all consolidation cases), there was an intervening constitutional or statutory provision for the amendment or repeal of corporate charters, which was held to apply to the consolidated company; and in *St. Louis, &c., Railway Co.* v. *Berry*, 113 U. S. 465, 475, and *Keokuk & Western Railroad* v. *Missouri*, 152 U. S. 301, 305, (also consolidation cases) an intervening constitution prohibited a new grant of exemption from taxation. The decisions in *Louisville & Nashville R. R. Co.* v. *Palmes*, 109 U. S. 244, 253; *Memphis Railroad Co.* v. *Commissioners*, 112 U. S. 609, 617; *Chesapeake & Ohio Railway Co.* v. *Miller*, 114 U. S. 176, 187, and *Norfolk & Western Railroad* v. *Pendleton*, 156 U. S. 667, 671, (foreclosure cases) also illustrate the effect of such an intervening constitutional or statutory provision upon the power of the successor or purchasing corporation to receive an exemption. The cases of *Morgan* v. *Louisiana*, 93 U. S. 217, 221; *Railroad Companies* v. *Gaines*, 97 U. S. 697, 711; *Railroad Co.* v. *County of Hamblen*, 102 U. S. 273; *Railroad Co.* v. *Commissioners*, 103 U. S. 1, 4; *Wilson* v. *Gaines*, 103 U. S. 417, 420; *Picard* v. *Tennessee &c. Railroad Co.* 130 U. S. 637, 640; *Wil-*

mington & Weldon Railroad v. *Alsbrook*, 146 U. S. 279, 294; *Phoenix Insurance Co.* v. *Tennessee*, 161 U. S. 174, 176; *Home Insurance Company* v. *Tennessee*, 161 U. S. 198, and *Covington &c. Turnpike Co.* v. *Sandford*, 164 U. S. 578, 586, did not involve any question of consolidation or of constitutional restriction, but turned upon the construction of charters which were claimed to grant exemptions, or upon the effect of an attempted transfer of such exemptions.

No one claims that a consolidation, "upon such terms as the consolidating companies may agree upon," can properly include any powers or rights or privileges not authorized by the charters of the consolidating companies or in direct conflict with an existing constitution. But when a contract right is found in one of those charters, and is germane to the purposes of the corporation, and can be exercised by the consolidated company as appurtenant to the property of the company upon which it was originally conferred, and there is no constitutional inhibition then obtaining, what is there in the character and purpose of the transaction or in the words of the grant of power to prevent the transmission of this right to the consolidated company or to require its forfeiture on consolidation? Every presumption favors the continuance of such a contract right where its continued exercise is not forbidden, and where it is clearly valuable and beneficial in the ownership and operation of the property to which it adheres. The decision in *Green County* v. *Conness*, 109 U. S. 104, 106, is express authority that power to consolidate "upon such terms as may be deemed just and proper" includes power to transfer such rights to the new company, there being no intervening constitutional inhibition

In this view, the precise effect of the consolidation pro-

ceedings is not important. In either event, merger or consolidation, the immunity or right would not be forfeited and would pass to a new company. It is only when the present power of the legislature to vest this immunity or franchise in a new company comes in question that the character of the consolidation is decisive. If, at that time, a constitution or statute has intervened, and the effect of the consolidation is the creation of a new corporation, the immunity may be incapable of being conferred or transmitted or renewed. But if, on the other hand, the right of appropriation is a mere contract right, an existing chose in action, passing to the consolidated company by virtue of the merger or consolidation, and not forbidden by the constitution and laws then in force, no reason is perceived why the new company should not possess and exercise it.

CONCLUSION.

It is, therefore, submitted that the provision appropriating taxes to pay part of the cost of constructing the railroad in question constituted a contract which was not in conflict with the constitutions of Mississippi of 1869 or 1890; that this contract right passed to the Yazoo and Mississippi Valley Railroad Company by the consolidation or merger of 1892; that the statutes under which it was adjudged below that the state revenue agent was entitled to recover impaired such contract in violation of the Constitution of the United States; and that the judgment of the Supreme Court of Mississippi should be reversed.

Washington, October Term, 1899.

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APPENDIX A.

Constitutional provisions involved.

CONSTITUTION OF 1869.

ARTICLE XII., SEC. 13. The property of all corporations for pecuniary profits shall be subject to taxation the same as that of individuals.

SEC. 20. Taxation shall be equal and uniform throughout the State. All property shall be taxed in proportion to its value, to be ascertained as directed by law.

CONSTITUTION OF 1890.

SECTION 66. No law granting a donation, or gratuity, in favor of any person or object shall be enacted, except by the concurrence of two-thirds of each branch of the legislature, nor by any vote for a sectarian purpose or use.

SECTION 181. The property of all private corporations for pecuniary gain shall be taxed in the same way and to the same extent as the property of individuals, but the legislature may provide for the taxation of banks and banking capital, by taxing the shares according to the value thereof (augmented by the accumulations, surplus, and unpaid dividends), exclusive of real estate, which shall be taxed as other real estate. Exemptions from taxation to which corporations are legally entitled at the adoption of this constitution, shall remain in full force and effect for the time of such exemptions as expressed in their respective charters, or by general laws, unless sooner repealed by the legislature. And domestic insurance companies shall not be required to pay a greater tax in the aggregate than is required to be paid by foreign insurance companies doing business in this state, except to the extent of the excess of their ad valorem tax over the privilege tax imposed upon such foreign companies; and the legislature may impose privilege taxes on building and loan associations in lieu of all other taxes except on their real estate.

SECTION 182. The power to tax corporations and their property shall never be surrendered or abridged by any contract or grant to which the state or any political subdivision thereof may be a party, except that the legislature may grant exemption from taxation in the encouragement of manufactures and other new enterprises of public utility extending for a period not exceeding five years, the time of such exemptions to commence from date of charter, if to a corporation; and if to an individual enterprise, then from the com-

mencement of work; but when the legislature grants such exemptions for a period of five years or less, it shall be done by general laws, which shall distinctly enumerate the classes of manufactures and other new enterprises of public utility entitled to such exemptions, and shall prescribe the mode and manner in which the right to such exemptions shall be determined.

SECTION 183. No county, city, town, or other municipal corporation shall hereafter become a subscriber to the capital stock of any railroad or other corporation or association, or make appropriation, or loan its credit in aid of such corporation or association. All authority heretofore conferred for any of the purposes aforesaid by the legislature or by the charter of any corporation, is hereby repealed. Nothing in this section contained shall affect the right of any such corporation, municipality, or county to make such subscription where the same has been authorized under laws existing at the time of the adoption of this constitution, and by a vote of the people thereof, had prior to its adoption, and where the terms of submission and subscription have been or shall be complied with, or to prevent the issue of renewal bonds, or the use of such other means as are or may be prescribed by law for the payment or liquidation of such subscription or of any existing indebtedness.

SEC. 192. Provision shall be made by general laws whereby cities and towns may be authorized to aid and encourage the establishment of manufactories, gas-works, water-works, and other enterprises of public utility other than railroads, within the limits of said cities or towns, by exempting all property used for such purposes, from municipal taxation for a period not longer than ten years.

SEC. 258. The credit of the state shall not be pledged or loaned in aid of any person, association, or corporation; and the state shall not become a stockholder in any corporation or association, nor assume, redeem, secure, or pay any indebtedness or pretended indebtedness alleged to be due by the state of Mississippi to any person, association, or corporation whatsoever, claiming the same as owners, holders, or assignees of any bond or bonds, now generally known as "Union Bank" bonds and "Planters' Bank" bonds.

SEC. 279. All writs, actions, causes of action, proceedings, prosecutions, and rights of individuals and bodies corporate, and of the state, and charters of incorporation shall continue.

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APPENDIX B.

Laws creating the contract in question.

ORIGINAL CONTRACT FOR APPROPRIATION.

An Act to incorporate the Mobile and Northwestern Railroad Company, approved July 20, 1870.

SECTION 21. *Be it further enacted*, that in consideration of the construction of the Railroads provided for herein, and of the great benefit which the State will receive in the development of its agricultural resources by means of said Railroads as works of internal improvement, and also of the increased value which will thereby be added to the property of the State, thus enabling the State to greatly increase its revenue without additional and burdensome taxation upon the people, the State hereby agrees with said Company (and which agreement is irrepealable), that all taxes to which said Company shall be subject for the period of thirty years, are hereby appropriated and set apart, and shall be applied to the payment of the debts and liabilities which the said Company may have incurred in the construction of said road, or for money borrowed by said Company upon lands or otherwise, to be used in constructing said road, or paying debts incurred by said Company in constructing the same; and it shall be the duty of the Tax Collector in every county in each and every year, to give to said Company a receipt in full for the amount of said taxes upon receiving from said Company an affidavit made by the President or Cashier of said Company, that the amount of said taxes have actually and in good faith been paid and applied by said Company during the year, in payment of the debts incurred, or money borrowed as aforesaid, and which receipt so given shall be in full of all taxes, county, State, and municipal, to which said Company shall be subject; *Provided, however*, That whenever the profits of said Company shall enable it to declare and pay to the stockholders an annual dividend of eight per cent. upon its capital stock over and above the payment of its debts and liabilities, then the appropriation of the taxes aforesaid shall cease, and said taxes shall be paid by said Company to the Tax Collector, to be by him paid over as required by law. Laws Mississippi, 1870, p. 268.

Act Applying Section 21 to the Memphis and Vicksburg Railroad Company and Others.

An Act supplemental to the Acts of incorporation of certain Railroad Companies, approved August 8, 1870.

Section 1. *Be it enacted by the Legislature of the State of Mississippi*, That the provisions of the twenty-first section of an Act entitled, "An Act to incorporate the Mobile and Northwestern Railroad," be, and they are hereby made to apply to the following Railroad Companies: the Memphis and Vicksburg Railroad; the Vicksburg, Yazoo Valley, and Grenada Railroad; the Canton and Vicksburg Railroad; the Natchez and Jackson Railroad; the Meridian and Red River Railroad; the Ship Island, Mississippi City, and Paducah Railroad; the Elyton and Aberdeen Railroad; the Grenada, Louisville, and Meridian Railroad; the Greenville and Rolling Fork Railroad; and the charters of said Companies are hereby amended so as to confer upon said Companies all the rights, privileges, immunities, and franchises granted by the Act of incorporation of the said Mobile and Northwestern, embraced in the twenty-first section thereof.

Sec. 2. *Be it further enacted*, That this Act take effect and be in force from and after its passage. Laws Mississippi, 1870, p. 327.

Charter of the Memphis and Vicksburg Railroad Company.

An Act to incorporate the Memphis and Vicksburg Railroad Company, approved August 8, 1870.

(Authority to consolidate was conferred by this act upon the Memphis and Vicksburg Railroad Company.)

Sec. 16. *Be it further enacted*, That said Company shall have the right and power to consolidate the stock, property, and franchises of the road with any other road or roads, in or out of this State, at any time that the President and Directors of the road may deem proper, and upon such terms as may be consistent with the powers conferred upon said Company. Laws Mississippi, 1870, p. 326.

Charter of the New Orleans, Baton Rouge, Vicksburg and Memphis Railroad Company.

An Act to incorporate the New Orleans, Baton Rouge, Vicksburg and Memphis Short Line Railroad Company, approved March 9, 1882.

(Authority to consolidate was conferred by this act upon the "Baton Rouge" Company.)

Sec. 25. *Be it further enacted*, That the company shall have power and authority to purchase and hold any connecting railroad, and operate the same or to consolidate the company with any other company, under the name of one or both; but when such purchase is made or consolidation is effected, the said company shall be entitled to all the benefits, rights, franchises, lands and property of every description belonging to said road or roads so sold or consolidated. Laws Mississippi, 1882, p. 932.

Charter of the Louisville, New Orleans and Texas Railway Company.

(By this act the power to consolidate already conferred upon the Memphis and Vicksburg Railroad Company and the "Baton Rouge" Company was extended to the company to be formed; and the provisions of section 21 were also made applicable to such Company.)

An Act to authorize the Memphis and Vicksburg Railroad Company and the Mississippi Valley and Ship Island Railroad Company to effect a consolidation, approved March 3, 1882.

Section 1. *Be it enacted by the Legislature of the State of Mississippi*, That the Memphis and Vicksburg Railroad Company and the Mississippi Valley and Ship Island Railroad Company, be and they are hereby authorized and empowered to consolidate with each other, or with each other and any other railroad company or companies, whether such company or companies have been incorporated under the laws of this State or of any other State, so that all of the companies so consolidating shall be merged into and become one company; and the company so formed by such consolidation shall be deemed and held to be a corporation created by the laws of this State, and shall have, enjoy and possess all the rights, ways, privileges, franchises, property, grants and immunities, which are now possessed by the companies which may enter into such consolidation, as fully as though the same were conferred specially in this

act, and to that end the charters of said consolidating companies shall be taken and held to be a part of this act. Laws Mississippi, 1882, p. 1011.

SEC. 5. *Be it further enacted*, That the provisions of the twenty-first section of an act entitled, "an act to incorporate the Mobile and Northwestern Railroad," approved July 20, 1870, is hereby made to apply to the said consolidated company, and for that purpose the said section is hereby declared to be part of this act, and this section shall be construed as though the said twenty-first section was specially and fully set out herein; but this section shall not be in force for a longer time than twenty-five years from the approval of this act. *Id.*, p. 1013.

CHARTER OF YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY.

An Act incorporating the Yazoo and Mississippi Valley Railroad Company, and declaring its powers, approved February 17, 1882.

SEC. 5. *Be it further enacted*, That said company may, from time to time, mortgage or convey in trust any or all of its property, real, personal or mixed, of any and every description whatsoever, then owned or thereafter to be acquired, and also all or any of its rights, powers, privileges, liabilities, immunities and franchises whether then owned, possessed and enjoyed or thereafter to be acquired, including its rights to be a corporation; and under such deed or deeds of trust or mortgage secure, execute and dispose of the mortgage bonds of said company, to such amounts and maturing at such times and bearing such interest as it may deem best; said company may also execute a mortgage or mortgages and trusts as aforesaid, to secure bonds or obligations of other railroad companies, or may endorse the bonds of any other railroad company or companies; or in any other manner guarantee such bonds and secure the same by a mortgage or mortgages on its own property and franchises, then owned or thereafter to be acquired, as fully as it could do if the bonds were issued by it as aforesaid; said company may consolidate with any other railroad company in or out of the State of Mississippi upon such terms as the consolidating companies may agree upon; and it may lease its railroads and all its property and franchises, rights, powers, privileges and immunities then owned or thereafter to be acquired, or lease other railroads in or out of this State, for a term of years or in perpetuity, and upon any such consolidation, the consolidated company shall have and enjoy all the property, rights, privileges,

powers, liberties and immunities and franchises herein granted; but such consolidation shall not have the effect of exempting from taxation the railroad or property owned by such other consolidating company prior to its consolidation with the company hereby chartered; nor of exempting from taxation any property which the consolidated company may, after such consolidation acquire under the provisions of the charter of such other consolidating company; and in case of a lease, the lease (lessee) shall, so far as the terms of the lease may allow, enjoy and possess all the property, rights, powers, privileges, liberties, immunities and franchises which the lessor had as to the leased premises; the said company is also authorized to do an express business over its own and other lines of railroad and steamboats or other conveyances in and out of this State; and to acquire or put up, use and operate a line or lines of telegraph in this and other State or States, and to acquire, hold and enjoy all such property as may be proper, necessary or convenient in doing the said express or telegraph business *provided*, that by such consolidation the maximum in section six applies only to roads hereafter built. Laws Mississippi, 1882, p. 842.

AMENDATORY ACT OF MARCH 15, 1884 (CH. 593).

(This act, supplemented by the consolidation agreement, operated to confer upon the Louisville, New Orleans and Texas Railway Company the power to consolidate already possessed by the Memphis and Vicksburg and the "Baton Rouge" Railroad Companies. The consolidation agreement expressly covered "*franchises, grants, * * * privileges*," thus including the existing right to consolidate.)

An Act to amend an act entitled "an Act to authorize the Memphis and Vicksburg Railroad Company and the Mississippi Valley and Ship Island Railroad Company to effect a consolidation," approved March 3, 1882.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That the act entitled "an act to authorize the Memphis and Vicksburg Railroad Company and the Mississippi Valley and Ship Island Railroad Company to effect a consolidation," approved March 3, 1882, be and the same is hereby so amended as to authorize and empower the Memphis and Vicksburg Railroad Company and any other railroad company or companies incorporated under the laws of this State, to consolidate, in the manner and upon the terms and conditions, and with the rights, privileges and immunities in said act mentioned, with each other and any railroad company or companies incorporated or organized under the laws of

any other State or States, and that such consolidation may be so effected whether the Mississippi Valley and Ship Island Railroad Company becomes a party to such consolidation or not.

SEC. 2. Be it further enacted, That this act take effect and be in force from and after its passage. Laws Mississippi, 1884, p. 936.

ACT AUTHORIZING CONSOLIDATION BY NATCHEZ, JACKSON AND COLUMBUS RAILROAD COMPANY.

An Act to authorize the Natchez, Jackson and Columbus Railroad Company to sell its railroad, situated in this State, or to consolidate the same, approved February 19, 1890.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That the Natchez, Jackson and Columbus Railroad Company, incorporated on the 21st day of July, 1870, under the laws of this State, be and it is hereby authorized and empowered to sell absolutely all or any part of its railroad and other property, lying, being and situated in the State of Mississippi, together with all franchises, rights, powers, privileges and immunities, unto the said Natchez, Jackson and Columbus Railroad Company appertaining and belonging.

SEC. 2. That the Louisville, New Orleans and Texas Railway Company, and the Natchez, Jackson and Columbus Railroad Company are hereby authorized to consolidate with each other, under the name of the Louisville, New Orleans and Texas Railway Company, and upon such terms as may be agreed upon by said companies.

SEC. 2. (3). That this act take effect and be in force from and after its passage. Laws Mississippi, 1890, p. 675.

APPENDIX C.

Laws impairing the obligation of the contract.

ANNOTATED CODE OF MISSISSIPPI, 1892, p. 860.
CHAPTER 116—REVENUE.

3803 (512.) *What receivable for taxes.*—All coins made current by the laws of the United States, United States treasury notes, and national currency, and all warrants drawn by the auditor on the state treasurer during the fiscal year for which the taxes are due, shall be received by tax-collectors in payment of taxes due to the state; and, in addition to such current coins and currency, all warrants drawn on the county treasury according to law shall be received in payment of county taxes, unless, otherwise provided by law.

3875 (597.) *Assessment and taxation of railroads; each company to file schedule.*—Each railroad company owning and operating a railroad, shall, on or before the first Monday in April in each year, file with the railroad commission a complete schedule, under oath, of all its property, real or personal, taxable and non-taxable, setting forth therein the length in miles or fractions thereof of its entire road-bed, switches, and side tracks, and showing how many miles or fractions thereof lie in this state, and in each county of the state, and in each city, town, or village, and the value of the whole and each part thereof, as subdivided herein; the total amount of capital stock, its par value and its actual value, and the value of its franchise; the number of engines and their respective values; the gross amount of receipts in the year preceding; the number of cars of all kinds, their classes and value; the number of depot-buildings and warehouses and other buildings; in what county and city, town, village, or levee district located, and the value of each, including the lands and lots upon which the same are built; the value of all machine and car shops and stationary machinery and tools therein, and in what county and city, town, village, or levee district located, including the land upon which the same are built; all real, personal, or mixed property belonging to the company within the state, not enumerated, with its value; the number of bridges and ferries in this state, in what county and city, town, village, or levee district situated, and the value of each, and specifying whether such value is or is not included in the value of the road-bed; a list of all lands in this state owned, describing the same, and giving the location and value thereof, the quantity of land used for depots and machine-

shops, and its value aside from the buildings thereon; the gross amount of receipts the year preceding from passengers and freights separately, and the proportion thereof earned within and from this state; and if any of said property is claimed to be exempt from taxation, it shall be separately stated, and the law cited under which the claim is made.

3876. *The same; penalty for failure.*—If any company, corporation, or person who should do so, shall fail, neglect, or refuse to render the schedule required by the last section, such company, corporation, or person shall forfeit and pay to the state, for every such failure, neglect, or refusal, the sum of five thousand dollars, to be recovered by action, which shall be instituted and prosecuted under the direction of the railroad commission; and, in case of such failure, neglect, or refusal, the commission shall make out such schedule from the best information obtainable.

3877. *The same; state railroad assessors.*—The members of the railroad commission are constituted state railroad assessors, and they shall, upon the receipt or making and completion of the schedules provided for in the last two sections, assess all railroads, telegraph, sleeping-car, and express company property liable to taxation in the state, affixing its true value, so that such property shall bear its just proportion of taxation, taking into consideration the value of the franchise, the capital stock engaged in the business in this state; and the railroad assessors may adopt other and further rules necessary and proper to ascertain the value of property to be assessed by them, including the amount of capital engaged in the business in this state.

3878. *The same; not bound by schedules rendered.*—If in any case the state railroad assessors have reason to believe that any railroad company, or person owning or operating a railroad, has rendered a false or fraudulent schedule, and that an assessment predicated thereon will relieve such company or person of a just share of taxation, they shall not, in making the assessment, be bound thereby, but they shall make out a proper schedule as if none had been rendered, first giving such person or company five days' notice to come forward at a time and place to be named, and show cause why such a course should not be pursued. Such notice shall be served and returned as a summons from a court.

3879. *The same; records to be kept and preserved.*—Complete and full records shall be kept by the railroad commission of all things done under the authority conferred upon it and on its members by the provisions of this chapter.

3880. *The same; assessments to be made by the counties, etc.*—The state railroad assessors shall, if practicable, on or before the first Monday of June, and if impracticable, as soon thereafter as it can be done, in each year, make out for each county having any railroad, telegraph, sleeping-car, palace-car, dining-car, or express company property therein an assessment-roll of such property, both real and personal, and the same shall be in such form as they may prescribe, as near in conformity to ordinary assessment-rolls as convenient and practicable, the property in cities, towns, villages, and levee districts being distinguished; and the same shall contain all the property of any such company or other railroad property in the county, and the value thereof, and the state taxes thereon, and so made that each county, levee district, and municipality shall receive its just share of such taxes proportionately to the amount of the property therein situated; and the same, when made, shall remain on deposit for one month in the office of the railroad commission, and be for said time subject to the objections thereto which may be filed; but the taxes on other real estate belonging to railroads than that forming a part of the road, shall not be extended on the rolls.

3881. *The same; objections heard, etc.*—It shall be the duty of the railroad commissioners to meet in the capitol, at the city of Jackson, on the first Monday in July of each year, or, in case of failure, as soon thereafter as practicable, for the purpose of hearing and considering objections to assessments made by them; and they shall remain in session until all objections are heard and disposed of; and they may, if they think objections just, sustain the same and amend assessments, if necessary, accordingly.

3882. *The same; assessments sent to the counties.*—So soon as the assessment-rolls have remained subject to objection for one month, and when all objections, if any, are disposed of, the assessment-rolls shall be approved either by order of the railroad commission or by operation of law, and the same shall be sent to the clerks of the boards of supervisors of the respective counties, who shall file and preserve the same as a record.

3883. *The same; duty of the clerk.*—The clerk shall make two copies of said assessment-roll as of other assessment-rolls, and dispose of them as provided by law in case of the general assessment-rolls, and perform all duties required of him in other cases. (See § 3794*a*.)

3884. *The same; the tax-collectors.*—The tax-collectors shall collect the railroad taxes from said rolls in all respects as he collects other taxes; but in case of a sale for delinquent railroad taxes, the

collector shall first seize and sell personal property or lands other than the road-bed, and, second, rolling-stook; and, lastly, the road-bed of the railroad in his county.

3885. *Telegraph, express, sleeping-car companies, etc.*—Telegraph, express, sleeping-car, palace-car, and dining-car companies shall be assessed for ad valorem taxation in the same manner as railroads; and the railroad commissioners shall be assessors thereof, and shall perform the same duties in respect thereto as in the case of railroads, and at the same time and with like effect. The clerks and tax-collectors shall perform the like duties as required in case of railroads.

3886. *The same; schedules.*—The person or corporation owning or operating a telegraph line, or carrying on the business of an express, sleeping-car, palace-car, or dining-car company, shall file the schedules required of railroads within the time and under like penalties; and the schedules shall contain the same or such of the particulars required of railroads as to the property and rights of the company, as the railroad commissioners shall direct, and such other particulars as they shall demand.

4199. *Compensation.*—Neither the state nor any county, municipality, or levee board shall be chargeable with any fees or expenses on account of any investigation or suit made or instituted by the state revenue agent; and he shall not receive any salary; but he shall be entitled to retain as full compensation for his services and expenses, twenty per centum on all amounts collected and paid over by him, and of the purchase-money of all lands bid in for the state by him and sold by the land-commissioner.

4200. *Parties to suits by.*—In all suits against delinquent tax-payers, the assessor and tax-collector shall be made parties; and if it shall appear that the failure of the tax-payer to properly pay his taxes was caused by any willful default or negligence of the assessor or tax-collector, judgment shall be rendered against the defaulter or defaulters for the amount of compensation of the revenue agent.

Laws of 1894, Ch. 34.

An Act to provide for the election of a State Revenue Agent, to prescribe his powers and duties, and to repeal sections 4187, 4190, 4191, 4192, 4193 and 4195, in chapter 126 of the annotated code of Mississippi, approved February 7, 1894. Laws Mississippi, 1894, p. 29.

Section 1. *Be it enacted by the Legislature of the State of Mississippi,* That there shall be a State Revenue Agent, who shall be elected at the general election in 1895 in the same manner that other

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State officers are elected, and whose term of office shall be four years, and until his successor is elected and qualified. The present incumbent shall hold office for the term of his appointment, and until his successor is elected and qualified.

SEC. 2. The State Revenue Agent may appoint a sufficient number of deputies. He shall have power and it shall be his duty to proceed by suit in the proper court against all officers, county contractors, persons, corporations, companies and associations of persons for all past due and unpaid taxes of any kind whatever, for all penalties or forfeitures for all past due obligations and indebtedness of any character whatever owing to the State or any county, municipality or levee board, and for damages growing out of the violation of any contract with the State or any county, municipality or levee board. He shall have a right of action and may sue at law or in equity in all cases where the State or any county, municipality or levee board has the right of action or may sue. It is the duty of the State Revenue Agent to investigate the books, accounts and vouchers of all fiscal officers of the State, and of every county, municipality and levee board, and to sue for, collect and pay over all money improperly withheld from either, and he has the power to sue and right of action against all such officers and their sureties to collect any such moneys; but if the delinquency appear by a correct open account on the books of the proper accounting officer, the right of the Revenue Agent to sue shall arise only after he has given thirty days notice to the delinquent officer to pay over the amounts and he fails to do so.

SEC. 3. After the expiration of the fiscal year in which taxes become due should the Revenue Agent discover that any person, corporation, property, business, occupation or calling has escaped taxation by reason of not being assessed, it shall be his duty to give notice to the tax collector in writing, and the collector shall within ten days thereafter make the proper assessment by way of an additional assessment on the roll or tax list in his hands, and give ten days notice in writing to the person or corporation whose property is assessed, and all objections to such assessments shall be heard at the next meeting of the board of supervisors of counties, or board of mayor and aldermen of municipalities. The board of supervisors or mayor and aldermen shall also be notified in writing by the collector of said assessment and the State Revenue Agent may appear at said meeting, and an appeal to the circuit court may be taken from the order of the board approving or disapproving such assessment by either party. If the assessment be approved and no appeal be taken, and the taxes shall not be paid within thirty days thereafter, the property, if it be real estate, shall be ordered sold as provided by

section 3850 of the annotated code of Mississippi, and if it be personalty, the tax collector shall proceed to collect by distress or otherwise. If the tax collector shall fail or refuse to make an assessment and report the same as herein required, he shall be liable on his bond for the amount of taxes properly collectible and ten per cent. damages thereon. If the assessment rolls be in the hands of the assessor at the time the Revenue Agent makes discovery of property which has escaped taxation, he shall give the required notice to the assessor, who shall make the proper assessment, and give the required notices to the owner of the property and to the board of supervisors or mayor and aldermen, under like penalties for failure as provided against the collector, and like proceedings shall be had. When any taxes shall be collected under assessments made as herein required, the Revenue Agent shall receive therefor, at the time of collection, the same compensation allowed him by law for other collections.

SEC. 4. If the property which the Revenue Agent discovers to have escaped taxation shall belong to any railroad or other corporation which, under the law, is required to be assessed by the State railroad assessors, the Revenue Agent shall give the notice required herein to said State railroad assessors, and they shall give the required notice to the company or corporation. At their next meeting after giving the proper notice, said property shall be assessed in the same manner required by law, and placed on the proper county, municipal or levee board roll, and collected by the proper officers in the manner required by law, and the Revenue Agent shall have his compensation as in other cases.

SEC. 5. The Revenue Agent in the discharge of his official duties shall have full power and authority to examine and investigate the books, records, papers, accounts and vouchers of any State, county, municipal or other officer.

SEC. 6. The Revenue Agent shall have power to sue for, collect and have assessed as herein required, delinquent taxes or taxes that have escaped the assessor and collector back to and including the year 1886, and no further.

SEC. 7. That sections 4187, 4190, 4191, 4192, 4193, and 4195, in chapter 126 of the annotated code of Mississippi, be and the same are hereby repealed.

SEC. 8. That this act take effect and be in force from and after its passage.

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APPENDIX D.[1]

I. List of charters containing agreement for appropriation of taxes as embodied in section 21 of Act of July 20, 1870.

1870. Mobile and Northwestern Railroad Company, Laws 1870, 255, 268.
" Memphis and Vicksburg Railroad Company, Laws 1870, p. 327.
" Vicksburg, Yazoo Valley, and Grenada Railroad Company, *Ib.*
" Canton and Vicksburg Railroad Company, *Ib.*
" Natchez and Jackson Railroad Company, *Ib.*
" Meridian and Red River Railroad Company, *Ib.*
" Ship Island, Mississippi City, and Paducah Railroad Company, *Ib.*
" Elyton and Aberdeen Railroad Company, *Ib.*
" Grenada, Louisville, and Meridian Railroad Company, *Ib.*
" Greenville and Rolling Fork Railroad Company, *Ib.*
1871. Meridian, Red River and Texas Railroad Company, Laws 1871, pp. 119, 129.
" Artesia, Starkville and Grenada Railroad Company, Laws 1871, pp. 138, 147.
" Columbus, Fayette and Decatur Railroad Company, Laws 1871, pp. 187, 188.
" Lexington Branch Railroad Company, Laws 1871, pp. 189, 199.
" Elyton, Corinth and Tennessee River Railroad Company, Laws 1871, pp. 202, 218.
" Yazoo City, Raymond and Crystal Springs Railroad Company, Laws 1871, pp. 228, 236.
" Vicksburg, Pensacola and Ship Island Railroad Company, Laws 1871, pp. 237, 250.
" Ripley Railroad Company, Laws 1871, pp. 268, 279.
1872. An Act to encourage the introduction of Machinery and the establishment of Factories, etc., Laws 1872, p. 65.
" Arkansas City and Grenada Railroad Company, Laws 1872, pp. 347, 360.
" Corinth, Kossuth, and Kosciusko Railroad Company, Laws 1872, pp. 335, 346.
" Corinth and Nashville Railroad Company, Laws 1872, p. 283.
" Gibson and Rolling Fork Railroad Company, Laws 1872, pp. 294, 297.

[1] Regular sessions of the Legislature of Mississippi were held annually between 1870 and 1878, inclusive, and thereafter beginning with the year 1880 were held biennially.

1872. Grenada, Houston, and Eastern Railroad Company, Laws 1872, pp. 286, 291.
" Helena, Water Valley, and Eastern Railroad Company, Laws 1872, pp. 299, 311.
" Mississippi River and Sardis Railroad Company, Laws 1872, pp. 380, 386.
" Memphis, Oxford, and Meridian Railroad Company, Laws 1872, pp. 369, 379.
" Natchez and Brookhaven Railroad Company, Laws 1872, pp. 362, 367.
" New Orleans, Baton Rouge, and Vicksburg Railroad Company, Laws 1872, pp. 246, 255.
" New Orleans and Northeastern Railroad Company, Laws 1872, p. 314.
" Vicksburg, Yazoo Valley, and Grenada Railroad Company, Laws 1872, pp. 319, 335.
1873. Mississippi Mills, Laws 1873, p. 212.
" Stonewall Cotton Factory, Laws 1873, p. 212.
" Perkinsville Manufacturing Company, Laws 1873, p. 303.
" Wanneeta Mills and Magnolia Mills, Laws 1873, p. 367.
" Ashland Railroad Company, Laws 1873, pp. 518, 520.
" Ashland, Holly Springs and Chulahoma Railroad Company, Laws 1873, pp. 596, 597.
" Grenada, Louisville, and Meridian Railroad Company, Laws 1873, pp. 513, 514.
" Holmes County Central Railroad Company, Laws 1873, pp. 520, 530.
" Liberty and Woodville Railroad Company, Laws 1873, pp. 499, 509.
" Mississippi City and Helena Railroad Company, Laws 1873, pp. 531, 540.
" Mobile and Little Rock Railroad Company, Laws 1873, pp. 576, 579.
" Pascagoula and Jackson Railroad Company, Laws 1873, pp. 496, 499.
" Savannah and Memphis Railroad Company, Laws 1873, pp. 594, 595.
" West and East Railroad Company, Laws 1873, pp. 479, 488.
" Yazoo City, Yazoo Valley Railroad Company, Laws 1873, pp. 543, 553.
1878. Natchez, Jackson and Columbus Railroad Company, Laws 1878, pp. 233, 234.
1880. Jackson, Yazoo City and Arkansas City Railroad Company, Laws, 1880, pp. 228, 234.

1880. Greenville, Columbus and Birmingham Railroad Company, Laws 1880, pp. 246, 247.
1882. Gordon Cotton Mills Company, Laws 1882, pp. 574, 576.
" Port Gibson Cotton Mills, Laws 1882, pp. 591, 596.
" Vicksburg and Mississippi Railroad Company, Laws 1882, pp. 896, 916.
" Louisville, New Orleans and Texas Railway Company, Laws 1882, pp. 1011, 1013.
1884. Louisville, New Orleans and Texas Railway Company, Laws 1884, p. 936.

II. List of charters granting exemptions from taxation.

1870. Whitworth Female College, Laws 1870, pp. 380, 381.
" Macon Male School, Laws 1870, pp. 401, 402.
" Attala County Agricultural and Mechanical Association, Laws 1870, pp. 457, 459.
1873. Educational Society of South Mississippi and East Louisiana, Laws 1873, pp. 429, 433.
" Baldwyn Female College, Laws 1873, p. 435.
" University of Columbus, Laws 1873, pp. 438, 439.
" Plowman and Agricultural Society, Laws 1873, p. 462.
1874. Abbeville Female College, Laws 1874, p. 158.
1877. Manufacturing Companies, Laws 1877, p. 72.
1878. Port Gibson, Utica and Crystal Springs Railroad Company, Laws 1878, pp. 463, 472.
" Brandon Street Railroad Company, Laws 1878, pp. 484, 487.
1880. All railroads while in process of construction, Laws 1880, pp. 19, 86.
" Lea Female College, Laws 1880, pp. 291, 293.
" Meridian and Aberdeen Fair Grounds, Laws 1880, p. 633.
1882. Purchasers of railroads at foreclosure, on incorporation, Laws 1882, pp. 47, 48.
" Delta Land and Manufacturing Company, Laws 1882, pp. 533, 537.
" Mississippi Improvement and Manufacturing Company, etc., Laws 1882, pp. 545, 550.
" Mississippi Mining, Milling, etc., Company, Laws 1882, pp. 555, 558.
" Star Mining, Milling and Manufacturing Company, Laws 1882, pp. 559, 561.
" Marshall Mills, Laws 1882, pp. 561, 564.

1882. D. Mayer Agricultural and Manufacturing Company, Laws 1882, pp. 564, 565.
" Hope Oil Mill, etc., Company, Laws 1882, pp. 570, 573.
" Warren Cotton Mills Company, Laws 1882, pp. 587, 588.
" Luxapalila Manufacturing and Mining Company, Laws 1882, pp. 588, 591.
" Cooper's Wells Company, Laws 1882, pp. 599, 602.
" Meridian Mills, Laws 1882, pp. 606, 608.
" Blue Mountain Academy, Laws 1882, pp. 667, 668.
" Louisville Male and Female Seminary, Laws 1882, p. 670.
" Palo Alto Academy, Laws 1882, pp. 675, 676.
" Yazoo and Mississippi Valley Railroad Company, Laws 1882, pp. 838, 847.
" Memphis and New Orleans Railroad and Levee Company, Laws 1882, pp. 874, 883.
" Canton, Aberdeen and Nashville Railroad Company, Laws 1882, pp. 1001, 1009.
" Memphis, Selma and Brunswick Railroad Company, Laws 1882, p. 1022.
" Gulf and Ship Island Railroad Company, Laws 1882, pp. 849, 861.
" Birmingham and North-Western Railroad Company, Laws 1882, pp. 1040, 1049.
" Tennessee and Mississippi Rivers Railroad Company, Laws 1882, pp. 989, 1000.
" Vicksburg and North-Eastern Railroad Company, Laws 1882, pp. 1015, 1018.
" Meridian, Brookhaven and Natchez Railroad Company, Laws 1882, pp. 1049, 1064.
" Helena, Sardis, Pontotoc and Birmingham Railroad Company, Laws 1882, pp. 885, 895.
" Mississippi Mexican Gulf Railroad Company, Laws 1882, pp. 961, 974.
" Alabama and Mississippi Railroad Company, Laws 1882, pp. 863, 870.
" Mississippi and Arkansaw Railroad Company, Laws 1882, pp. 933, 942.
" Meridian, Winona and Helena Railroad Company, Laws 1882, pp. 943, 959.
" Mississippi, Alabama and Georgia Railway Company, Laws 1882, pp. 975, 988.
" Pass Christian City Railroad Company, Laws 1882, pp. 818, 821.

1882. City Railroad of Columbus, Laws 1882, pp. 822, 824.
" Georgia Pacific Railway Company, Laws 1882, pp. 824, 826, 834, 837.
1884. Mississippi State Fair Association, Laws 1884, pp. 827, 829.
" Sunflower Navigation Company, Laws 1884, pp. 859, 862.
" Hunt and Huddleston College Faculty Association, Laws 1884, pp. 874, 876.
" Lea Female College, Laws 1884, pp. 878, 879.
" Maury Institute, Laws 1884, pp. 880, 881.
" Grenada Collegiate Institute, Laws 1884, pp. 881, 883.
" Caledonia Branch Railroad Company, Laws 1884, pp. 888,895.
" Warrior Coal Fields Railroad Company, Laws 1884, pp. 895, 901.
" Tombigbee Railroad Company, Laws 1884, pp. 901, 907.
" Moss Point, Scranton and East Pascagoula Railroad Company, Laws 1884, pp. 911, 915.
" Macon and Tuscaloosa Railroad Company, Laws 1884, pp. 915, 916.
" Mississippi River and Deer Creek Railroad Company, Laws 1884, p. 918.
" Memphis, Oxford and Columbus Railway Company, Laws 1884, pp. 919, 920.
" Port Gibson & Alabama Railroad Company, Laws 1884, pp. 922, 934.
" Terry, Brandon and Northeastern Railroad Company, Laws 1884, pp. 936, 937.
" Helena, Memphis and New Orleans Railroad Company, Laws 1884, pp. 937, 938.
" West Point Street Railway Company, Laws 1884, pp. 941, 944.
" Tombigbee and Grand Trunk Railroad Company, Laws 1884, p. 950.
" Natchez and Mobile Railroad Company, Laws 1884, pp. 951, 953.
" Front and Asylum Street Railway Company, Laws 1884, pp. 955, 956.
" Mississippi River and Mexican Gulf Railroad Company, Laws 1884, pp. 957, 963.
" Rodney, Jackson and Tuscaloosa Railroad Company, Laws 1884, pp. 968, 969.
" Arkansas City, Winona and Eastern Railway Company, Laws 1884, pp. 969, 971.
" Mississippi River and Eastern Railroad Company, Laws 1884, pp. 975, 986.

1884. Tallahatchie Valley Railroad Company, Laws 1884, pp. 987, 992.
" New Orleans and Northwestern Railway Company, Laws 1884, pp. 994, 1004.
" Meridian and Brunswick Railroad Company, Laws 1884, pp. 1005, 1013.
" Helena, Water Valley, Aberdeen and Birmingham Railroad Company, Laws 1884, pp. 1014, 1023.
1886. Kansas City, Memphis and Birmingham Railroad Company, Laws 1886, pp. 191, 200.
" Memphis, Birmingham and Atlantic Railroad Company, Laws 1886, pp. 203, 207.
" Pensacola and Memphis Railroad Company of Mississippi, Laws 1886, pp. 209, 221.
" Vicksburg, Yazoo-Delta and North Eastern Railway Company, Laws 1886, pp. 222, 227.
" Hill City Street Railway Company, Laws 1886, pp. 232, 235.
" Mississippi and Louisiana Bridge and Railroad Company, of Natchez, Mississippi, Laws 1886, pp. 237, 244.
" Port Gibson Female College, Laws 1886, p. 634.
" Cooper Normal College, Laws 1886, pp. 726, 727.
" Pittsboro Male and Female College, Laws 1886, pp. 734, 735.
1888. Macon, Tuscaloosa and Birmingham Railroad Company, Laws 1888, pp. 490, 499.
" Helena, Tupelo and Decatur Railroad Company, Laws 1888, pp. 500, 508.
" Brookhaven, Columbia and Mobile Railroad Company, Laws 1888, pp. 508, 509.
" Enterprise Street Railway Company, Laws 1888, p. 518.
" Vicksburg Electric Street Railway Company, Laws 1888, pp. 522, 523.
" Mississippi and Gulf Railroad Company, Laws 1888, pp. 542, 546.
" Mississippi Southern Railway Company, Laws 1888, pp. 548, 557.
" Columbus, Fulton and Eastport Railroad Company, Laws 1888, pp. 558, 563.
" Greenville and Durant Railroad Company, Laws 1888, pp. 563, 569.
" Waynesboro, Pascagoula and Gulf Coast Railroad Company, Laws 1888, pp. 570, 575.
" Greenville, Egypt Ridge and Bogue Phaliah Railway Company, Laws 1888, pp. 584, 591.
" Meridian Cotton Mills, Laws 1888, pp. 595, 596.

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1888. Natchez Hotel, Laws 1888, p. 614.
" Deasonville High School, Laws 1888, p. 628.
" Liberty Male and Female College, Laws 1888, pp. 630, 631.
" Tombigbee Normal Institute, Laws 1888, p. 632.
" Montrose High School, Laws 1888, pp. 635, 636.
" Gulf Port Dental College, Laws 1888, p. 638.
" Mt. Carmel Normal College, Laws 1888, pp. 639, 640.
1890. Millsaps College, Laws 1890, pp. 553, 555.
" Pickens High School, Laws 1890, p. 561.
" Harper's Baptist College, Laws 1890, pp. 563, 564.
" Pleasant Hill High School, Laws 1890, pp. 569, 570.
" Hebron High School, Laws 1890, pp. 570, 571.
" Bellefontaine Male and Female High School, Laws 1890, p. 574.
" Saltillo High School, Laws 1890, p. 577.
" Waynesboro Normal Institute and College, Laws 1890, pp. 581, 582.
" Old Myrtle Normal College, Laws 1890, pp. 583, 584.
" Starkville Street Railway Company, Laws 1890, pp. 655, 660.
" Nashville and Mississippi Delta Railroad Company, Laws 1890, pp. 682, 687.
" Mississippi River, Alabama and Chattanooga Railroad Company, Laws 1890, pp. 703, 713.
" Greenville Nashville and Chattanooga Railway Company, Laws 1890, pp. 732, 741.
" Columbus and Fulton Railroad Company, Laws 1890, pp. 743, 751.
" Alabama, Mississippi and Western Railroad Company, Laws 1890, pp. 751, 756.
" South Mississippi Railroad Company, Laws 1890, pp. 759, 767.
" Yazoo Delta Central Railway Company, Laws 1890, pp. 769, 778.

An Act for the relief of the Mobile and Northwestern Railroad Company, approved February 28, 1880.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That the said sum of three thousand six hundred and sixteen 06-100 dollars is hereby released to the said Mobile and Northwestern Railroad Company.

SEC. 2. *Be it further enacted*, That this act shall take effect and be in force from and after its passage.